

EXHIBIT 4

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 - - - - - x

4 IRVING H. PICARD, TRUSTEE
5 FOR THE LIQUIDATION OF
6 BERNARD L. MADOFF INVESTMENT
7 SECURITIES LLC,

8 Plaintiff,

9 v. Adv. Case No. 10-04488 (SMB)

10 SOUTH FERRY BUILDING COMPANY,
11 ET AL.,

12 Defendants.

13 - - - - - x

14
15 U.S. Bankruptcy Court
16 One Bowling Green
17 New York, New York 10004-1408

18
19 December 6, 2017
20 10:02 AM

21
22
23 B E F O R E :

24 HON STUART M. BERNSTEIN
25 U.S. BANKRUPTCY JUDGE

1 Hearing re: Motion for Summary Judgment (also applies to
2 Adv. Pro. Nos. 10-04350, 10-05110, and 10-04387)

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Transcribed by: Dawn South and Lisa Beck

1 A P P E A R A N C E S :

2 BAKER HOSTETLER

3 Attorneys for the Trustee

4 45 Rockefeller Plaza

5 New York, NY 10111

6

7 BY: KEITH R. MURPHY, ESQ.

8 NICHOLAS J. CREMONA, ESQ.

9

10 BAKER MCKENZIE LLP

11 Attorney for the Defendants

12 815 Connecticut Avenue, NW

13 Washington, DC 20006

14

15 BY: RICHARD A. KIRBY, ESQ.

16 GRAHAM R. CRONOGUE, ESQ.

17 JENNIFER ANCONA SEMKO, ESQ.

18

19 SECURITIES INVESTOR PROTECTION CORPORATION

20 Attorney for SPIC

21 1667 K. Street, N.W., Suite 1000

22 Washington, DC 20006-1620

23

24 BY: KEVIN H. BELL, ESQ.

25

1 P R O C E E D I N G S

2 THE COURT: Okay. Madoff?

3 MR. MURPHY: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. MURPHY: Keith Murphy of Baker & Hostetler,
6 counsel for the trustee.

7 Your Honor, this morning we're here on a
8 consolidated hearing in four adversary proceedings in which
9 the trustee and the defendants have each sought summary
10 judgment.

11 Those actions are Picard versus South Ferry
12 Building Company, Picard versus South Ferry II, et al.,
13 Picard versus United Congregation of Missouri, and Picard
14 versus James Lowery, et al.

15 Your Honor, we seek summary judgment on the
16 trustee's counts under Section 548(a)(1)(a) for actual
17 fraudulent transfers by BLMIS to these defendants. We also
18 oppose the defendants' motions for summary judgment.

19 In these cases, Your Honor, the trustee -- the
20 parties have agreed to joint statements of undisputed facts,
21 which are before the Court. Those statements establish the
22 trustee's prima facie case with the avoidance of the
23 fraudulent transfers and the burden is now on the defendants
24 to establish any affirmative defense they may have.

25 The primary focus of the defendants, Your Honor,

1 in these cases is whether they provided value for the
2 fictitious profits received during the two years prior to
3 BLMIS's collapse, but the defendants cannot do so here
4 because they lack any factual or legal basis to protect the
5 transfers of fictitious profits.

6 The defendants can't assert that they took the
7 transfers for value because there's no facts in the record
8 which establish that.

9 The defendants cannot as a matter of law establish
10 it for value because the courts in these proceedings have
11 repeatedly held that such false profits on account -- are
12 not on account of a valid antecedent debt.

13 The defendants don't dispute that we have
14 satisfied our prima facie case and satisfy our burden of
15 proof.

16 I'll just go over a few key points. The
17 defendants have admitted to the following.

18 That they are recipients of transfers in excess of
19 deposits or fictitious profits within two years prior to
20 December 11, 2008.

21 That BLMIS made these transfers with the actual
22 intent to hinder, delay, or defraud some or all of its then
23 existing or future creditors.

24 That BLMIS was operating a Ponzi scheme at all
25 times relevant to the avoidance proceedings.

1 That BLMIS was insolvent from at least
2 December 11th, 2002 and all points thereafter.

3 And that the investment advisory business in which
4 they were invested did not actually trade securities for
5 customers and did not generate any legitimate profits for
6 the customer accounts.

7 There are additional stipulations, but I'll direct
8 the Court to the joint statements of undisputed material
9 facts.

10 Your Honor, the defendants' arguments here are
11 essentially the same as they have argued before in the
12 antecedent debt proceeding or some variation thereof. They
13 have been raised before Judge Rakoff, they have been raised
14 before this Court numerous times.

15 I will note that the defendants have participated
16 in the antecedent debt argument, they were expressly
17 included in participants. At that time the scope --

18 THE COURT: I thought only Lowery was. I looked
19 at the record -- I know that the motion to withdraw the
20 reference was made on behalf of all of the defendants --

21 MR. MURPHY: Your Honor -- sorry -- they were as
22 joinders to the lead case.

23 THE COURT: Okay. So every -- all of the
24 defendants were parties to the antecedent debt?

25 MR. MURPHY: Yes.

1 THE COURT: Okay.

2 MR. MURPHY: Your Honor, the scope of the
3 antecedent debt and value issues were defined in that
4 antecedent debt order issued by Judge Rakoff, and those
5 disclosed issues were decided on the merits.

6 That order provided that these procedures would be
7 -- the procedures established by that order or by further
8 order of the court could constitute the sole and exclusive
9 procedures for determination of the withdrawn antecedent
10 issue in the adversary proceedings.

11 So the issues that were withdrawn, Your Honor, the
12 consolidated briefings at that time were to consider whether
13 and to what extent the -- number one, the transfers made by
14 Madoff Securities that the trustee seeks to avoid were made
15 in exchange for value such as antecedent debts that Madoff
16 Securities owed to the antecedent debt defendants at the
17 time of the transfers.

18 And two, whether and to what extent the
19 obligations incurred by Madoff Securities may be avoided by
20 the trustee, including whether they were exchanged for
21 value, such as antecedent debts owed to the antecedent debt
22 defendants. Those were the issues at the time.

23 The District Court made that once the antecedent
24 debt issue decision was issued all affected actions would
25 then be returned to Your Honor for proceedings consistent

1 with those rulings. The defendants thus are bound by the
2 antecedent debt decision and the doctrine on precedent
3 (indiscernible).

4 Your Honor, based on the antecedent debt decision
5 as well as this Court's decision in the omnibus good faith
6 and the Cohen proceedings the trustee's motion should be
7 granted and the defendants' motions should be denied.

8 I will address the defendants' specific arguments
9 with respect to antecedent debt in a moment, but I just want
10 to turn for a moment to a Section 546(e) decision by the
11 Second Circuit which the defendants have argued changed the
12 law of the case and that it requires -- it constitutes a
13 mandate and requires a new look at Judge Rakoff's rulings.

14 This Court has considered that argument before and
15 it was rejected both in the omnibus good faith and in the
16 Cohen decision. But here in their papers the defendants are
17 misstating to this Court what the Second Circuit either
18 expressly or implicitly decided in that decision.

19 The Second Circuit never decided that the
20 contracts were enforceability, securities contracts. They
21 never stated that the transfers were valid settlement
22 payments or real securities transactions as reflected on the
23 defendants' on --

24 THE COURT: Well I guess the argument is that if
25 it's a settlement payment then it's got to be a payment for

1 value also. That's really what the argument is.

2 MR. MURPHY: It's their argument, Your Honor, but
3 I believe that the Second Circuit really was looking at what
4 it was -- the account opening document and account
5 authorizations, the Second Circuit viewed that essentially
6 as the contract, if you will, securities contract, and it
7 fell within the definition of 546(e).

8 As with respect to the payments they also felt
9 that these transfers qualified under the definition of a
10 securities -- of a settlement payment. But at no time did
11 they consider the issue of value or at no time did that say
12 that they were actually valid. They actually said that
13 there was actually -- those payments were made in connection
14 with the Ponzi scheme and as a result were fraudulent.

15 The Second Circuit made no express ruling
16 whatsoever as to the question of value, and it did not
17 change the rule of law that the defendants can only seek the
18 protections of 546(c) to the extent of their principle
19 investments.

20 THE COURT: 548(e).

21 MR. MURPHY: 548(c).

22 THE COURT: You said 548 --

23 MR. MURPHY: Correction. Thank you, Your Honor.

24 THE COURT: 548(c).

25 MR. MURPHY: 548(c). In fact I think Your Honor

1 the most recent view we have of the Second Circuit's opinion
2 on these issues comes from the Segar (ph) decision from June
3 of 2017 relating to the inner account transfers decision.

4 The Second Circuit at that time said:

5 "It continues to refuse however to treat
6 fictitious profits fictitious and arbitrarily assigned
7 paper profits as real and to give legal effect to
8 Madoff's machinations. This court of equity will not
9 (indiscernible) its power to assist or protect a
10 fraud."

11 The defendants have suggested that there's -- the
12 Second Circuit made a distinction and highlighted a conflict
13 between SIPA and the Bankruptcy Code and that that argument
14 should carry through here. And we know that the court has
15 said where Congress had made a clear choice the court must
16 enforce Congress's will. But that related only to the
17 546(e) statute of limitations and the trustee's power to
18 avoid transfers beyond a two-year period.

19 But here, unlike 546(e), there's no clear
20 statutory direction as to the satisfaction of claims against
21 the general estate would provide value for the fictitious
22 profits from a Ponzi scheme.

23 The provisions of the Bankruptcy Code, Your Honor,
24 apply to a SIPA liquidation to the extent that they are
25 consistent with the provision of SIPA, and the defendants

1 have failed to show any conflict between 546(c) and the
2 goals of SIPA. So thus, Your Honor --

3 THE COURT: 548.

4 MR. MURPHY: 548(c). Thank you.

5 This Court has basically already considered, Your
6 Honor, and rejected these arguments before as no purported
7 changed law here that affects us in the mandate
8 (indiscernible).

9 I want to turn back now for the moment to the
10 antecedent debt arguments that were raised previously. I
11 will note essentially, Your Honor, that these arguments have
12 been raised effectively about six times previous. They've
13 been either litigated and expressly or impliedly decided.
14 That goes back to the District Court's decision in Griff
15 (ph), the District Court's decision in the antecedent debt
16 decision, the District Court's decision on the motion to
17 certificate interlocutory appeal for the antecedent debt
18 decision, this Court's omnibus good faith decision, the
19 Cohen report and recommendation that was issued by this
20 Court, as well as the Court's adoption of the report and
21 recommendation in whole after the de novo review.

22 So essentially this marks the seventh time that
23 we're seeing these same arguments. But the District Court
24 exhaustively reviewed all of these issues and settled them in
25 the antecedent debt decision.

1 As this Court recognized the defendants have had
2 the opportunity to raise these issues previously, they have
3 been rejected, and hearing them again does not add any
4 value. (Indiscernible) and in most instances law of the
5 case. And each time the defendants attempt to relitigate
6 these issues, Your Honor, they're going against the direct
7 violation of the antecedent debt order.

8 With respect to their federal and state securities
9 claims that was reviewed by Judge Rakoff and rejected. Even
10 if they had valid claims it doesn't constitute value under
11 SIPA with respect to the separate customer property estate.
12 That customer property estate is a priority estate, it's
13 intended to compensate consumers only for the net equity
14 claim.

15 Now, with respect to determining value, Your
16 Honor, SIPA requires consideration on whether it depletes
17 the resources available for payment of those priority
18 claims. But by withholding their profits in excess of their
19 net equity claims they're essentially making these claims
20 against the customer property estate, which is improper and
21 it would be in violation of SIPA.

22 Judge Rakoff has noted, as this Court as well,
23 that basically every circuit to review this has said that
24 fictitious profit transfers are not for value. And this
25 Court also said that there were basically two rules that it

1 could devine from all of this case law. And that the first
2 one applies in SIPA and non-SIPA cases alike, is that a
3 transferee does not give value beyond its deposits of
4 principle, and that was recently reaffirmed in Silverman
5 versus Powerman (ph), the Second Circuit which essentially
6 said although it hadn't come up to the Second Circuit for
7 (indiscernible) and review in this district and bankruptcy
8 court is that it agrees with this consensus.

9 The second rule that the court came up with is
10 that it applies in the SIPA Ponzi case involving fraudulent
11 transfer litigation. The rule is that you cannot argue that
12 fictitious profits satisfied an antecedent debt or
13 obligation and then provided value under 548(c).

14 SIPA creates two estates and cannot allow a net
15 winner to recover a non-SIPA claim against that customer
16 property estate at the expense of the net losing victims.

17 With respect to the failure to avoid obligations
18 to the defendants who has obligations this is just simply
19 the antecedent debt argument again. It fails for the
20 reasons that Judge Rakoff said in the antecedent debt
21 decision. He also rejected the fact that these account
22 statements were binding, enforceable obligations of BLMIS to
23 its customers that the trustee need to avoid as the amounts
24 that were reported on there were not antecedent debts that
25 was owed. In fact they were completely fictitious and

1 fraudulent and part of the scheme. He found that they were
2 invalid and entirely unenforceable.

3 In Griff, Your Honor, Judge Rakoff further
4 expounded on it actually, he said any entitlement that the
5 defendants had to return on their investment depended on a
6 representation that Madoff Securities had in fact generated
7 a profit, but that was completely not the case and they are
8 wholly fraudulent.

9 The defendants in this case have conceded the
10 Ponzi scheme and that BLMIS did not make trades and
11 therefore they cannot assert that there were any valid
12 antecedent obligations here.

13 One other argument raised by the defendants, Your
14 Honor, is at the time of the transfer they say that the
15 value must be measured at the time of the transfer. That
16 was actually specifically identified as an issue of the
17 withdrawn antecedent debt issues. The District Court
18 considered that and rejected it. Even if they held
19 legitimate brokerage accounts with Madoff they only would
20 have been entitled to their securities that they demand, but
21 the -- those were invalid completely.

22 With respect to the argument as to the statute of
23 repose that 548(a) is a statute of repose this same argument
24 was also raised in 548 -- excuse me -- in the antecedent
25 debt decision.

1 The defendants raised the statute of proposed
2 concept in their brief. They indicated that like statutes
3 of limitations reach-back periods of statutes of repose, and
4 they said that by not crediting the transferee for the full
5 value of the transfer made before the reach-back period the
6 trustee impairs the defendants' substantive rights. The
7 reality is Judge Rakoff considered that and rejected it.
8 It's really the reset to zero argument which was rejected in
9 favor of the trustee's netting method.

10 The trustee doesn't seek to recover more than the
11 two-year transfers here, and it's just simply using netting
12 to establish whether there somebody has net equity or
13 whether the claim has -- the trustee has a claim against a
14 defendant.

15 There's an argument, Your Honor, that comes --
16 that suggests that the trustee is improperly expanding his
17 bankruptcy powers. This was also rejected.

18 Essentially SIPA provides that a SIPA trustee has
19 the same powers as a trustee under Title 11, but SIPA
20 actually expands on that and provides that the Bankruptcy
21 Code provisions are incorporated only to the extent
22 consistent with the revisions of SIPA. And therefore, as
23 Judge Rakoff noted, the trustee's powers to avoid transfer
24 have to be viewed through a SIPA's statutory lens.

25 As noted, Your Honor, even if they had enforceable

1 claims relating to any of these statements a conclusion that
2 they gave value would conflict with SIPA.

3 I would note, Your Honor, that Judge Rakoff and
4 this Court have stated essentially that the -- SIPA
5 prioritizes net equity claims and that it incorporates in
6 its priority system -- excuse me -- SIPA prioritizes net
7 equity claims and incorporates its priority system into the
8 fraudulent transfer rules by allowing the trustee to recover
9 fraudulent transfers if the customer property estate is not
10 sufficient to pay all of the net equity claims.

11 This is a situation that we have here, the trustee
12 cannot satisfy the priority claims for the net equity estate
13 claimants, and therefore his powers are now enabled, and the
14 trustee can avoid the transfers to the defendants in
15 accordance with the priorities.

16 A related argument, Your Honor, in that vain is
17 that the defendants state that it was improper for SIPA's
18 priority scheme to essentially be applied after the
19 collapse. They say again at the time their value should be
20 viewed at the time of the transfer. But that completely
21 ignores that SIPA empowers a trustee to avoid the transfers
22 to recover customer property in order to pay those priority
23 claims.

24 You know, if Congress --

25 THE COURT: Wasn't that argument made though in

1 the antecedent debt litigation?

2 MR. MURPHY: I believe it was, Your Honor, yes.

3 548(c), Your Honor, the Court -- this Court and
4 Judge Rakoff have said this is an affirmative defense, SIPA
5 does not necessarily imply and it has to be applied the same
6 way to the customer property claim estate as it were the
7 general estate.

8 Your Honor, we made a point in our papers that the
9 defendants are essentially collaterally estopped as well by
10 the antecedent debt decision as well as it being law of the
11 case. That's in our papers. I will leave that to our
12 papers.

13 I will add though that the Cohen decision here
14 that the defendants attempt to separate themselves from that
15 Cohen decision, but there's really no basis whatsoever to
16 distance themselves from that. It's the same factual
17 predicate, and in fact the defendants were involved,
18 although they attempted to intervene and that was denied.
19 Mr. Cohen's counsel has said that the defendants' counsel --
20 or the intervenors I should say, were involved in --

21 THE COURT: Yeah, but they weren't parties.

22 MR. MURPHY: Excuse me?

23 THE COURT: They weren't parties.

24 MR. MRUPHY: They were not parties. But I think
25 here, Your Honor, regardless of whether they participated or

1 not or helped or not the fact is the Cohen proceedings was
2 so similar with their facts and the legal issue that is were
3 raised that it should be impossible to reach a different
4 conclusion here.

5 The defendants also want to distance themselves
6 from the Ponzi scheme terminology such as net winner and
7 Ponzi scheme, but the fact is they've admitted to that.
8 They admitted to this Ponzi scheme, that it did withdraw
9 more than they had put in. So they are net winners.

10 Ponzi scheme jurisprudence basically predates the
11 Bankruptcy Code and SIPA, and frankly Ponzi scheme law is
12 part of the law of fraudulent transfers. Frankly if
13 Congress had intended a different result or wanted it to not
14 apply that Ponzi scheme law they certainly could've written
15 it as such.

16 In fact as we so recorded on our brief United
17 States versus Langley, the Fourth Circuit 1995, unless
18 Congress clearly indicates a contrary intent a newly enacted
19 or revised statute is presumed to be harmonious with
20 existing law and its judicial construction.

21 Another point -- I want to make a point from the
22 Second Circuit's Net Equity decision as well, Your Honor.
23 The Second Circuit made clear that the time years ago that
24 the BLMIS customer statements reflect impossible
25 transactions and the trustee is not obligated to step into

1 the shoes of the defrauder or the treat the customer
2 statements as reflections of reality.

3 Briefly this Court has addressed the J.P. Morgan
4 decision. The defendants are trying to say that the trustee
5 is expanding his powers, but the trustee is only asserting
6 his statutory powers here. He's not asserting any common
7 law claims and he's not trying to expand his powers beyond
8 that. He's also asserting his own claims here, not anybody
9 else's.

10 Fairfield Greenwich is a case that the defendants
11 bring up yet again, and you've seen this before. It was a
12 case where the trustee was pressing to enjoin settlements
13 involving feeder firms, the related entities and investors,
14 but the case didn't involve an analysis in any way of the
15 relationship between the customer property estate and the
16 calculation of value as a defense to an avoidance action.
17 That relationship was actually clearly decided in the
18 antecedent debt and expounded upon in the omnibus good faith
19 and Cohen decisions, and that Court previously rejected the
20 applicability of the Fairfield decision, Your Honor.

21 Their other argument that was made that we've seen
22 before is that the defendants suggest they are not equity
23 investors and therefore the Ponzi scheme law that we've
24 cited and that this Court is aware of isn't applicable, but
25 that argument has been rejected. There's no basis for that

1 to suggest that because the vehicle of this particular Ponzi
2 scheme was a broker dealer that it makes any difference
3 whatsoever. Judge Rakoff said it was a distinction without
4 a difference and essentially paid lip service to really what
5 was going on here and the fact that this was a Ponzi scheme.

6 Your Honor, we would -- we have requested and said
7 that we would seek prejudgment interest in this case. We
8 are going to pursue that, Your Honor. We were -- we will
9 leave that argument for another day as we said, but I will
10 note as I've said here, these arguments have been going on
11 for five years, this is the seventh time. If you had told
12 the net losers that it would take ten years to get recovery
13 for these fraudulent transfers I think they would be stunned
14 and in disbelief. The fact the we are here during the
15 entire time the two-year transfers were never really at risk
16 or at issue.

17 Your Honor, that's -- I will conclude at that
18 point. I will save any further arguments for rebuttal.
19 Thank you.

20 THE COURT: Mr. Murphy, I think Mr. Bell just
21 wants to make a brief statement.

22 (Laughter)

23 MR. BELL: Mr. Murphy has stolen most of my lines.
24 Good morning, Your Honor.

25 Today is day 3,282 that the victims do not have

1 their money and the defendants --

2 THE COURT: Well they've been getting --

3 MR. BELL: -- have their money.

4 THE COURT: -- interim distributions.

5 MR. BELL: But even more importantly, Your Honor,
6 it was 1,512 days ago that Judge Rakoff issued the
7 antecedent debt. It was 1,391 days ago since we were all
8 here on Valentine's Day 2014 to talk about next steps. And
9 if you recall Mr. Swed (ph) got up and said let's do a
10 comprehensive grouping and Your Honor said we're not going
11 to go as slow as the slowest case.

12 Since that date the trustee has resolved more than
13 500 of these good faith adversary proceedings bringing in
14 about a half a billion dollars that have been distributed
15 and passed and will be distributed in a soon to be filed
16 allocation distribution motion.

17 So let's -- I just wanted to put that in context.
18 Mr. Murphy has highlighted everything, but as you know, I am
19 here on behalf of the Securities Investor Protection
20 Corporation and I filed this proceeding, so we've been
21 dealing with this for 3,282 days.

22 The important point is that I go back to your
23 published decision in Cohen -- or your findings and
24 conclusions, and I start (indiscernible) sound like a
25 mandate, 1,512 days of --

1 THE COURT: The antecedent debt decision.

2 MR. BELL: -- ago Judge Rakoff did this and said
3 apply. And then when we were here --

4 THE COURT: I don't think the record can pick up
5 your gestures.

6 MR. BELL: I'm sorry, I do the handcuffs where
7 Judge Rakoff said you are bound to apply this to the facts.
8 We have facts that have been conceded that I think are
9 sufficient. We have this argument on 546(e).

10 But if you go back to the Seminole decision that
11 led to the circuit decision, namely by Judge Rakoff, Judge
12 Rakoff (indiscernible) it out 548(a)(1)(a) actions, the two
13 of your actions which are the subject of this approximately
14 \$40 million of other people's money the defendants have been
15 holding for 3,282 days.

16 So clearly, you know, the Second Circuit decision
17 in 546(e), which affirmed Judge Rakoff, dealt with the two
18 year to six year money by which the --

19 THE COURT: Well, you know, the circuit also said
20 that a payment to a customer was a settlement payment even
21 if in this case Madoff never made the investment.

22 MR. BELL: And Judge Rakoff had addressed that in
23 his --

24 THE COURT: Okay. I thought what you were arguing
25 was that because 548(a)(1)(a) is carved out of 546(e), a

1 settlement payment would not be a payment on account of --

2 MR. BELL: As to matters that occurred in that
3 two-year period. And we had briefed that, we argued that in
4 the circuit. Clearly we addressed this in our brief and I
5 refer you to that where we say the circuit never addressed
6 that issue. It didn't address that issue, it was Judge
7 Rakoff decided that the only issue the circuit had was the
8 two to six year money and the extension of settlement
9 payment to that to create an element of finality. The
10 circuit did not go to that.

11 But if you look at the quotation that Mr. Murphy
12 gave from the six month ago decision in Segar by the circuit
13 they reaffirmed what they had said before the 546(e)
14 decision about fictitious statements at the conclusion of
15 that.

16 So the circuit has been consistent and I would
17 imagine that this case will -- you had proffered this on
18 Valentine's Day 2014 to say confessed judgment and we'll
19 certify it to the circuit. I would imagine we will follow
20 the (indiscernible) path for another thousand days or so to
21 get to the circuit, and I reaffirm Mr. Murphy's statement,
22 we're ready to brief prejudgment interest. But you know,
23 it's been a long time.

24 It's very clear, the decisions on SIPA and the 34
25 Act ignore the fact that except as otherwise provided in

1 SIPA. You know, we briefed that too, so I'm not going to
2 take your time since you asked me to be brief, Your Honor.

3 But basically --

4 THE COURT: Weren't those also raised in the
5 antecedent debt argument? I glanced at the brief yesterday.

6 MR. BELL: I'm sorry, Your Honor, I didn't hear?

7 THE COURT: This notion that there were claims
8 under the 34 Act, for example, that was also under Section
9 29 I think.

10 MR. BELL: Yeah.

11 THE COURT: Wasn't that also briefed?

12 MR. BELL: Yeah, we briefed that.

13 THE COURT: No, I mean it was briefed --

14 MR. BELL: Yes.

15 THE COURT: -- before Judge Rakoff.

16 MR. BELL: We've been consistent for the whole
17 history of SIPA in reading the statute as it's written. It
18 says except as otherwise provided.

19 THE COURT: But the issue of this notion that
20 there was antecedent debt because there was some securities
21 law obligations in the 34 Act briefed to Judge Rakoff.

22 MR. BELL: Yes.

23 THE COURT: Yeah.

24 MR. BELL: And he said no. You know, I mean he
25 clearly -- Judge Rakoff clearly understood in that decision

1 of October 15th, 2012, 1,512 days ago, that the relationship
2 between the 34 Act and the Code, he and I have had dialogues
3 about where our statute -- the SIPA statute is placed, it's
4 in Title 15, it was written by the commission back in 1970
5 in the industry. I'm just here to apply what I'm sort of
6 bound by the words of this action.

7 So clearly there are words that are written in
8 there that we have to follow. You know, there are
9 provisions that say except where inconsistent with SIPA the
10 Bankruptcy Code applies. So it's those fine points that
11 Judge Rakoff got in the decision that I think you're
12 absolutely correct in your writings on Cohen, which was
13 affirmed by Judge Swain.

14 As you recall Mr. Kirby was among a group of
15 intervenors, you wrote about that, Judge (indiscernible)
16 affirmed, and the Second Circuit didn't rule because
17 Mr. Cohen settled with the trustee before he filed an
18 appeal. So, you know, it is what it is.

19 I know, you know, Mr. Kirby knows, we're going to
20 go to the circuit on this question. I do think that it's as
21 you have done with other directions from Judge Rakoff in the
22 recent past it's a mandate.

23 THE COURT: Good or bad?

24 MR. BELL: I'm not commenting on that one, Your
25 Honor. Thank you very much. I'll speak to you later.

1 Thank you.

2 THE COURT: Thank you.

3 Mr. Kirby, I think it's your turn.

4 MR. KIRBY: Thank you, Your Honor. Good morning
5 and may it please the Court.

6 Our clients have asserted two affirmative defenses
7 which we believe apply in this case, and it's for that
8 reason we've sought summary judgment.

9 The facts are not in dispute, our clients have a
10 statutory defense under 548(c) that gives them the right to
11 retain the payments that they received at the time of the
12 transfer that were valid settlement payments or payments on
13 account of --

14 THE COURT: But could something be a settlement
15 payment for purposes of 546(c) and still not be a payment
16 for -- a payment of an antecedent debt or the satisfaction
17 of an antecedent debt --

18 MR. KIRBY: I --

19 THE COURT: -- let me just finish -- for purposes
20 of 548(c)?

21 MR. KIRBY: I don't see how you could construe
22 that, Your Honor. The reason I say that is this. 546(e)
23 incorporates -- what fundamentally 546(e) does it says the
24 only statute -- avoidance statute that would apply is the
25 avoidance statute in 548(a)(1). Integral to 548(a)(1) is

1 the defense of 548(c) .

2 THE COURT: But is that designed to -- is the rule
3 under 546(e) designed to provide a transferee with a defense
4 or to avoid roiling the securities markets?

5 MR. KIRBY: It is designed -- what they -- the
6 statute, 546(3) says, there's going to be one of wins
7 provision in a securities case like this, and that is the
8 intentional fraudulent transfer. But part of that statute
9 is 548(c), and there's no way that you can read the statute
10 as if wiping out that defense.

11 THE COURT: So why didn't the Second Circuit just
12 dismiss all the good faith cases?

13 MR. KIRBY: Nobody has brought that motion to the
14 Second Circuit.

15 So we have a defense based upon the payments that
16 were made at the time of the transfer. And we look at the
17 statute, and the statute says you focus on whether the
18 payment was valid --

19
20 THE COURT: Can I -- let me ask a question. If
21 the payment qualified as a settlement payment but it clearly
22 not to value because there was no antecedent debt would you
23 still have the same defense you're arguing?

24 MR. KIRBY: Your Honor, I can't accept that
25 premise, but the answer is --

1 THE COURT: Well what's the source of the
2 obligation to make the payment that BLMIS made to your
3 client?

4 MR. KIRBY: The answer to that is state law. The
5 securities --

6 THE COURT: Not the contracts.

7 MR. KIRBY: What?

8 THE COURT: Did you have a right under your -- the
9 customer agreement to get the payments of fictitious
10 profits? Let's just start there, because I'm trying to
11 identify --

12 MR. KIRBY: The customer agreement simply provides
13 it for a contract.

14 THE COURT: Right.

15 MR. KIRBY: There is a separate statement that's
16 received that reports securities entitlements in a book
17 entry system. But we --

18 THE COURT: So this is your Article 8 argument?

19 MR. KIRBY: Well that's what the Second Circuit
20 recognized in recognizing that they were settlement
21 payments. It's explicit in recognizing that there is a
22 state law right to the payment at the time.

23 THE COURT: But didn't the Second Circuit, I think
24 it was either in the Segar case or in the IBS Management
25 case say (indiscernible) law trumps that particular

1 statement law even if does create a right?

2 MR. KIRBY: Well that's right, I agree it would if
3 there was an attempt to preempt, but that is -- goes to a
4 fundamental part of our argument is that the -- SIPA -- this
5 is a SIPA case, and the federal -- it's part of the 1934 Act
6 securities statute --

7 THE COURT: Uh-huh.

8 MR. KIRBY: -- and there is an express provision
9 in the securities statute, 28(a)(2).

10 THE COURT: But didn't you make that argument
11 before Judge Rakoff?

12 Let me tell you how I see this just so we put it
13 in perspective. You, along with many others, make a motion
14 to withdraw the reference on this issue, the reference is
15 withdrawn, you were the author of the brief -- the
16 consolidated brief I think, Judge Rakoff decides it and
17 sends it back to me and says, adjudicate all these other
18 cases consistent with this opinion.

19 You made these arguments before Judge Rakoff, he
20 decided it, and yet I'm bound to follow Judge Rakoff in this
21 matter.

22 MR. KIRBY: You would be --

23 THE COURT: I will hear argument if anything else
24 has occurred since the antecedent debt decision, but beyond
25 that I'm not going to say Judge Rakoff was wrong when he

1 decided what he decided.

2 MR. KIRBY: Your Honor, in our view the decision
3 of the Second Circuit in the 546(e) decision supersedes part
4 of the analysis --

5 THE COURT: Okay.

6 MR. KIRBY: -- that Judge Rakoff made.

7 And the second -- our second position is that the
8 Supreme Court decision in Halpers overrules any aspect of
9 Judge Rakoff's decision with respect to the statute of
10 repose.

11 So what I think would probably be most
12 constructive for the Court is for us -- I had planned on
13 talking about five distinct points, and I would like to just
14 outline them and then go from there.

15 THE COURT: Go ahead. I've read your brief.

16 MR. KIRBY: Yes, I understand.

17 The first point is why we believe what the trustee
18 is asking the Court to do is contrary to well understood
19 fraudulent transfer law.

20 Number two, what our position is, is that they
21 misread the SIPA statute, and with all due respect to my
22 colleague at SIPC, there is no way to read the statute the
23 way they do, which is that somehow the bankruptcy -- that
24 SIPA supersedes the fraudulent transfer provisions --

25 THE COURT: But part of my frustration with this

1 is trying to figure out what arguments were laid and decided
2 or rejected by Judge Rakoff and what arguments weren't made
3 to Judge Rakoff and arise from facts or law that occurred
4 after that decision.

5 MR. KIRBY: Let me get to that, because --

6 THE COURT: Because I'm not -- you know, I'm not
7 going to say that Judge Rakoff was wrong when he decided the
8 antecedent debt decision. He withdraw the reference on that
9 and he decided it.

10 MR. KIRBY: I understand that, but our position
11 is, is that Judge Rakoff's decision has now been superseded
12 --

13 THE COURT: Okay.

14 MR. KIRBY: -- by the decision in 546(e), the
15 mandate of that decision, which our clients were part of and
16 it comes back to you not because of Judge Rakoff's
17 antecedent debt decision, but it comes back to you and it's
18 our -- because of the mandate from the Second Circuit on the
19 546(e) decision. That's what we are -- it is before. And
20 so to the extent that the 546(e) decision is not consistent
21 with Judge Rakoff's decision there's no choice but you have
22 to revisit the issues. You have to revisit the issues. And
23 I will suggest that we cite in our papers the Pan Am case in
24 the Second Circuit.

25 THE COURT: So why isn't that part of the order

1 withdrawing the reference? In other words if you think that
2 Judge Rakoff is now wrong because of events that occurred
3 afterwards don't you go back to Judge Rakoff and make that
4 argument? He withdraw the reference on this issue.

5 MR. KIRBY: Well I think the answer is, is that
6 he's remanded that case, and this gets to the point of why I
7 was saying the Pan Am case, the Lockerby Long (ph) case.
8 The Second Circuit issued that decision as a rule of
9 decision about how the damages would be calculated. Later
10 the Supreme Court ruled that a different rule, a decision
11 should be considered and how that damages would be
12 calculated in that case.

13 When it gets back to the Second Circuit the Second
14 Circuit says we now have to -- even though we've already
15 decided that issue --

16 THE COURT: Uh-huh, but it's the same --

17 MR. KIRBY: -- it's our responsibility --

18 THE COURT: But it's the same court reviewing its
19 own decision.

20 MR. KIRBY: It's the same issue for you. This is
21 on remand to you from the Second Circuit. And so --

22 THE COURT: Okay. Go ahead.

23 MR. KIRBY: And so you have to address the issue
24 in the first instance of why the mandate doesn't control.
25 And in our view the mandate does control on that point.

1 But the second thing is, and this is why I cite to
2 the Pan Am case that we cite in our papers, is that the
3 Supreme Court itself has made the decision on the limits and
4 how to treat a statute of repose. Just this last term
5 since. And --

6 THE COURT: But does your statute of repose
7 argument go to that when we look at the two years and you
8 don't look back?

9 MR. KIRBY: Not just on transfers, but on the
10 obligations themselves. That's what the statute says.

11 But our larger point and our larger defense is
12 that we have a -- this is a -- SIPA is part of a federal
13 statute, there are two statutes that govern. One, 28(a)(2)
14 as I mentioned, which says that state law claims are
15 permitted. They are not preempted by anything in the 1934
16 Act.

17 THE COURT: But you made this argument before
18 Judge Rakoff.

19 MR. KIRBY: Well Judge Rakoff got it wrong.

20 THE COURT: All right. But I'm not --

21 MR. KIRBY: You have an opportunity to correct it.
22 But the second argument --

23 THE COURT: I don't think that when a mandate is
24 issued that I have the right to say you know what you issued
25 the mandate but I think you're wrong so I'm going to ignore

1 it.

2 MR. KIRBY: But the second argument was never
3 raised before Judge Rakoff, the 29(b) argument --

4 THE COURT: I read your brief last night and it
5 cited 29(b) -- just a minute -- I think five times.

6 MR. KIRBY: Your Honor, we have asserted that as
7 an affirmative defense, which we are in entitled.

8 THE COURT: I'm not arguing with you about that,
9 Mr. Kirby.

10 MR. KIRBY: Judge Rakoff decided that on 12(b)(6)
11 motion.

12 THE COURT: But it's a question of law.

13 MR. KIRBY: It is not a question of law. When you
14 choose to raise that defense they're not, because remember
15 29(b) gives the customer an option. He has an option to
16 either enforce the contract in the event of a fraud or to
17 void it.

18 THE COURT: But you've gotten your --

19 MR. KIRBY: And on the face of the trustee's
20 complaint there was not a mention of 29(b) of the fact that
21 it was an affirmative defense.

22 THE COURT: Well I don't think the trustee has to
23 plead affirmative defenses.

24 MR. KIRBY: Of course he doesn't.

25 THE COURT: But it was raised in the context of

1 the antecedent debt argument.

2 MR. KIRBY: Read anywhere in the -- in Judge
3 Rakoff's decision where he mentions 29(b).

4 THE COURT: He mentions federal securities laws
5 and he says that claims under the federal securities laws
6 are -- as well as state law, do not provide value, they're
7 not antecedent debts.

8 MR. KIRBY: Well --

9 THE COURT: He doesn't mention every single
10 federal security law that might apply, but he says that.

11 MR. KIRBY: Well let me go -- then let me start
12 with I think the proper way to consider this, Your Honor.

13 THE COURT: Okay.

14 MR. KIRBY: First as I indicated why fraudulent
15 transfer law generally would not permit the rule that the
16 trustee argues.

17 We cite in our papers and we have as our first
18 argument what -- the tradition of what fraudulent transfer
19 law is intended to do.

20 THE COURT: I notice the cite of the statute of
21 Elizabeth, that's going back a little bit.

22 MR. KIRBY: Right. Right. And Judge Bryer in his
23 Boston Trading case exhaustively reviews what fraudulent
24 transfer law is supposed to reach and what it is not
25 supposed to reach. And he gives as an example if A steals

1 money from B and pays -- uses that money to pay C, an
2 obligation owed to C, that's not fraudulent transfer law.

3 THE COURT: So let me come back to my question
4 that I asked, what was the source of the obligation to make
5 the payments? Are you saying it wasn't -- that BLMIS was
6 not under a contractual obligation to make the payments?

7 MR. KIRBY: It -- the source of the obligation is
8 based upon the -- under New York law, UCC, the security
9 report of a securities entitlement.

10 THE COURT: It sounds to me the way you're
11 responding that you're agreeing or conceding that the
12 customer agreements did not require the payment of the
13 fictitious profits.

14 MR. KIRBY: Customer agreements -- Your Honor,
15 let's just step back here.

16 You enter into a discretionary --

17 THE COURT: You're not going to answer my question
18 are you?

19 MR. KIRBY: I am going to answer the --

20 THE COURT: Okay.

21 MR. KIRBY: -- the question, Your Honor, but I
22 think the customer agreements simply provide for an
23 arrangement where discretion is vested with Mr. Madoff to
24 trade securities.

25 THE COURT: That's not true. Paragraph 5 of the

1 customer agreement, which is attached to your paper says,
2 with certain exceptions that are not relevant, "The customer
3 is entitled upon appropriate demand to the physical -- to
4 receive physical deliver of fully paid securities in the
5 customer's account." So that's a contractual obligation to
6 pay upon appropriate demand whatever is in the account. Are
7 you saying that there was a contractual obligation to pay
8 fictitious profits to the customers upon appropriate demand?

9 MR. KIRBY: The word fictitious profits is not --
10 there is a contractual obligation --

11 THE COURT: Okay. Okay.

12 MR. KIRBY: -- to pay the securities entitlements
13 which were reported to the customer.

14 THE COURT: That's not what it says. I understand
15 your statutory argument under Article 8 and under the
16 securities laws, I'm just focusing on the contract, because
17 the Second Circuit was focusing on the contracts in Fishman,
18 and that's all I'm asking. Because as I read these
19 contracts they don't obligate BLMIS to pay you money that's
20 not in your account.

21 MR. KIRBY: Your Honor, there's -- actually the
22 Second Circuit is explicit in (indiscernible) the UCC
23 requirement that a customer is entitled to payment of their
24 securities entitlements.

25 THE COURT: No, but the Second Circuit has

1 rejected that in two Madoff cases in the last couple of
2 years and it's rejected that beforehand.

3 MR. KIRBY: It says it explicitly in the 546(e)
4 decision.

5 THE COURT: But since then it has said that the
6 customer statements do not provide a basis for another
7 obligation.

8 MR. KIRBY: In the Segar case it said that with
9 respect to a SIPA net equity claim. The difference between
10 our clients and the net equity claim is our clients are
11 strangers to this case. They were customers, they received
12 their money years before there was ever a SIPA case. This
13 case has nothing to do with SIPA. It is --

14 THE COURT: Well wait a minute SIPA gives the
15 trustee the right to bring these actions.

16 MR. KIRBY: To bring this action --

17 THE COURT: Right.

18 MR. KIRBY: -- but what does SIPA say? SIPA says
19 that the Bankruptcy Code avoidance provisions apply.

20 THE COURT: Right.

21 MR. KIRBY: And that's why we are here, because --

22 THE COURT: I understand. We're back to, you
23 know, the antecedent debt argument. Go ahead.

24 MR. KIRBY: What the Second Circuit said -- I want
25 to get back to my example with Judge Bryer. What the Second

1 Circuit said is we're deemed -- in the 546(e) decision, and
2 it's explicit on this point, we believe it's part of the
3 mandate -- that when you're dealing with the Bankruptcy Code
4 you look only to the Bankruptcy Code, you don't look to
5 SIPA, because the SIPA statute itself borrows the Bankruptcy
6 Code fraudulent transfer --

7 THE COURT: To the extent consistent with SIPA.

8 MR. KIRBY: Your Honor, that's in 6(b) of SIPA.
9 But the standing of the trustee does not arise from 548, it
10 arises from 8(c)(3) of SIPA, which gives him the right to
11 pursue the claim to the extent a transfer is void or
12 voidable under the Title 11. That's what the statute says.

13 So what we're here is 8(c)(3), and norms of
14 statutory construction you cannot read SIPA is in any way
15 replacing the Bankruptcy Code.

16 THE COURT: But didn't you argue that before Judge
17 Rakoff?

18 MR. KIRBY: Your Honor, we did indeed argue that
19 before Judge Rakoff, but we also argued it before the Second
20 Circuit. Because what the trustee argued in the Fishman
21 case and what the trustee argued in Fishman was that, oh,
22 these were fraudulent transfers and these were fictitious.
23 And the court said that is what you look to when you're
24 deciding a SIPA net equity claim. The SIPA net equity
25 analysis does not apply.

1 THE COURT: I thought the Second Circuit said in
2 Fishman these were fraudulent transfers.

3 MR. KIRBY: I'm sorry?

4 THE COURT: The Second Circuit said in Fishman
5 these were fraudulent transfers.

6 MR. KIRBY: The Second Circuit only said that it
7 was limited to one claim, which is a claim for --

8 THE COURT: Well the Second Circuit said at page
9 422, "Certainly SIPC and the trustee are correct that these
10 transfers were also made in connection with a Ponzi scheme
11 and as a result were fraudulent."

12 MR. KIRBY: And it says also, Your Honor, at page
13 422, it says, "This argument, although compelling, is not
14 convincing. In our earlier decision we interpreted net
15 equity in a manner that would harmonize it with the SIPA
16 statutory framework." Section 546(e) however is part of the
17 Bankruptcy Code, not SIPA. And it was not at issue in the
18 net equity decision.

19 THE COURT: Uh-huh.

20 MR. KIRBY: This is important because in enacting
21 the Bankruptcy Code Congress struck balances between the
22 need for an equitable result for the debtor and its
23 creditors in any court finality.

24 THE COURT: So when Congress didn't
25 (indiscernible) the finality of the terms transactions

1 because they're not safe harbored should I then look for an
2 equitable result?

3 MR. KIRBY: No. Your Honor, the cases are clear
4 that equity is not available to the trustee -- equitable
5 claims are not available to this trustee.

6 I want to get back, Your Honor, to Judge Bryer's
7 example, because that really goes to the nub of our decision
8 -- of our issue.

9 We have asserted that Section 29(b) of the 34 Act,
10 which we've asserted as an affirmative defense, gives us --
11 our clients a right to enforce their contractual rights,
12 which included their right to a securities entitlement as
13 reported to them.

14 THE COURT: But that's a statutory right, that's
15 not a contractual right.

16 MR. KIRBY: Well it is --

17 THE COURT: We talked about the contractual right,
18 and obviously -- maybe not so obviously -- but I wouldn't
19 think that a customer under the customer agreement had the
20 right to insist on the payment of money that wasn't in their
21 account.

22 MR. KIRBY: Your Honor --

23 THE COURT: Which is what the fictitious profits
24 basically are.

25 MR. KIRBY: No. What -- all the customer -- at

1 the time of the transfer, which is what the Bankruptcy Code
2 asks the court to look at, not what might happen at some
3 point in the future, at the time of the transfer our clients
4 had state law rights to enforce their securities
5 entitlements, that is the settlement payment -- the basis
6 for the settlement payment determination in the Second
7 Circuit, it is explicit on that point, and that in our view
8 is part of the mandate from the Second Circuit, which is now
9 -- why this case is before you. And the court is explicit
10 on that point. But not only is that right protected by
11 federal -- by the 34 Act, but it is also part of SIPA,
12 because SIPA is part of that statute.

13 Our fundamental defense and the basis for that is
14 at the time of the transfers our clients were entitled to
15 those payments, which is -- take for example to Your Honor
16 in a book entry system there are no securities, there are no
17 physical securities. In a book entry system all you're
18 entitled -- all you get is a report of securities
19 entitlement, that's why the UCC makes that legally
20 enforceable under New York law. And that is what our
21 clients were entitled to at the time. That is how the
22 Bankruptcy Code measures this. And that is not how --
23 whether there later might be a SIPA net equity claim has
24 nothing to do with the issue, because our clients are not
25 SIPA claimants for a net equity.

1 I think I want to get back to my point about why
2 Judge Bryer's opinion in Boston Trading was so important.
3 The Second Circuit adopted that analysis in Shar (ph). You
4 remember the facts of Shar are very similar to our
5 situation.

6 The bank in Shar discovered that there may be some
7 financial mismanagement and demanded payment. They knew in
8 that case, they knew where the allegations where, they knew
9 that the issuer, the debtor was raising money through fraud.
10 And -- but they used the money to pay a valid claim at the
11 time. And the Second Circuit says they were paying a valid
12 claim to the bank and therefore there's -- fraudulent
13 transfer laws do not apply. Borrowing from Judge Bryer's
14 analysis.

15 Now, I think it's instructive that in the Griff
16 opinion by Judge Rakoff he spends a considerable amount of
17 time trying to distinguish Boston Trading and Shar. And
18 what he does is he bases it on the conclusion that these
19 were not enforceable contracts at the time. The problem
20 with that is, is the Second Circuit later overruled that
21 very point, concluding that those were settlement payments
22 and therefore valid at the time.

23 The second thing is, is that before Judge Rakoff
24 there was not an affirmative defense where our clients had
25 elected to enforce their rights under 29(b), and therefore

1 Judge Rakoff had no occasion, you can read his opinion from
2 cover to cover, he never addresses that issue. And you're
3 not certainly bound to something that he did not address.

4 So it's our view that -- and it's interesting if
5 you look at the trustee's papers in their response they have
6 no response to why that statute doesn't apply other than oh,
7 it might have been considered by Judge Rakoff. Well he
8 doesn't address it.

9 So we have both the mandate from the Second
10 Circuit on --

11 THE COURT: But didn't he address it in a sense
12 that he said that even if you have these claims they're
13 claims against the general estate and they can't provide
14 satisfaction of an antecedent debt which would involve
15 essentially a deduction from the customer estate?

16 MR. KIRBY: Your Honor, that's mixing a bankruptcy
17 case with a SIPA case. We are not -- our clients are not
18 net equity claimants in a SIPA case, and the statute is
19 clear on that. What makes it fundamentally clear is that
20 SIPA fixes the date for determining claims as of the date of
21 the petition.

22 THE COURT: But those are the net equity claims,
23 you said there's a difference.

24 MR. KIRBY: Right, and we're not there.

25 THE COURT: I understand you're not --

1 MR. KIRBY: Bankruptcy fixes the time for
2 determining the validity of a claim as of the date when the
3 transfer is made. And as of that date the trustee has
4 conceded that our -- as part of the facts that our clients
5 have no knowledge of the fraud, and that gives our clients
6 the right to enforce their secured -- state law securities
7 entitlements and to rely on their Securities Exchange Act
8 rights to enforce those at that time. And therefore they
9 receive what was lawfully due to them at the time.

10 Which gets back to Judge Bryer's example, it is
11 not part of fraudulent transfer law.

12 THE COURT: Well let me pick up on that point,
13 putting aside the SIPA cases it's clearly well settled that
14 fictitious profits don't provide value. What's your
15 response to that? You say it's not part of fraudulent
16 transfer law, it's not in the statute, but it's fairly well
17 -- part of the law through judicial decisions.

18 MR. KIRBY: Let just address that directly, Your
19 Honor.

20 I think the simplest way to approach this is that
21 the -- let me just -- the simplest way to approach this is
22 that you can accept all of those cases and still this case
23 is different, and let me explain why. The facts are
24 different. And why are the facts different? In our case
25 the trustee has stipulated that our clients were customers

1 with a registered broker dealer and that they were not
2 investors in the business of Madoff Securities.

3 Second, the law is different. Why is the law
4 different? Because in each of those cases, and if you read
5 each of them you will find that the customer -- that the
6 investors did not have legally enforceable rights. They had
7 a rescission claim, but they did not have legally
8 enforceable rights.

9 The difference in our case is that we have two
10 federal statutes which preserves our clients' rights to the
11 28(a)(2), which preserves our state law rights to get paid
12 the securities entitlements, and 29(b), which gives our
13 clients the right to, at their option enforce all their
14 contractual rights. And that is -- 29(b) is explicit
15 notwithstanding fraud on the part of the debtor. That
16 distinguishes all of those cases. Because if you read each
17 case they were either equity investors who would not have
18 contractual rights, or they're debt instruments in which the
19 courts ruled as in for example the Silverman case where the
20 -- they were not legally enforceable debts.

21 THE COURT: Well Charles Ponzi had a debt scheme
22 didn't he?

23 MR. KIRBY: Right. Right. But remember the
24 Bankruptcy Code was enacted long after Charles Ponzi, and as
25 Judge Bryer says, the example that the trustee posits here

1 that because Madoff defrauded other customers doesn't change
2 that bankruptcy law does not allow a trustee under
3 bankruptcy fraudulent transfer law to reach valid payments
4 to a defendant that were valid at the time of the transfer.

5 THE COURT: Did you make that argument to Judge
6 Rakoff?

7 MR. KIRBY: Well he addresses -- that issue he
8 addresses in his footnote 8 in the Griff decision. I was
9 not party to Griff. We did raise that issue in the papers.

10 But the key point here is, as I said before, what
11 makes this case -- why the antecedent debt decision is not
12 controlling is because the Second Circuit has addressed
13 specifically the issue of the enforceability of those
14 contract -- those rights in its Section 546(e) decision, and
15 that's part of the mandate of this case.

16 So in our view the Ponzi scheme cases have no
17 bearing on this case because of the enforceability rights
18 that our clients had at the time of the transfer.

19 Now, I do want to address what the law of the case
20 issue that -- and some of the prior decisions and talk about
21 those, because I think, you know, the trustee has spent a
22 lot of time and our friends from SIPC have said -- suggested
23 that somehow those prior decisions control here.

24 For our clients there are only two cases that are
25 potentially controlling that are law of the case. The

1 Section 546(e) decision, which our clients participated in,
2 and the antecedent debt decision. But the Section 546(e)
3 decision is part of the mandate. What is now before the
4 Court is the mandate which the Court is required to apply
5 not just what was explicitly decided in the case, but what
6 was implicitly decided in the case.

7 And so the mandate -- and the second thing --
8 argument is, it's not just the settlement payment part, but
9 that when you're looking at a -- for an avoidance provision
10 under the Bankruptcy Code SIPA does not control. That's
11 also part of the mandate. The part I read you on the last
12 page for the 546(e) decision is explicit on that point.

13 THE COURT: But doesn't it control on Rule --
14 under 548(a)(1)(A)?

15 MR. KIRBY: But part of 548(a)(1)(A) claims is the
16 defense of value. That's part and parcel of the statute.

17 THE COURT: Well, I guess what -- and I think the
18 point that Mr. Bell raised was whatever the Second Circuit
19 said about sending them payments and contractor had nothing
20 to do with claims under 548(a)(1)(A).

21 MR. KIRBY: What --

22 THE COURT: And hence, 548(c).

23 MR. KIRBY: Well, the part of -- then let's
24 just --

25 THE COURT: That's the argument.

1 MR. KIRBY: Let's look at why that doesn't make
2 any sense. It cannot both be a settlement payment and not
3 value.

4 THE COURT: Well, that's your underlying
5 assumption. Well, I'm not sure I agree with it but --

6 MR. KIRBY: Well, I -- it's not logical. At the
7 time of the transfer, it was value.

8 THE COURT: I'm not sure I agree with the
9 assumption that a settlement payment must be value because
10 the broad definition of settlement payments and securities
11 contract serves a particular purpose which has nothing to do
12 with this case.

13 MR. KIRBY: But the foundation for it is the UCC
14 provision for securities entitlements. That is the state
15 law. That has not been preempted. In fact, it has been
16 borrowed and it has been reinforced in the 34 active part of
17 SIPA. So it means what you have to -- Your Honor, yesterday
18 counsel sent you an e-mail correcting something that they
19 had said in their prior briefs. And you -- they quote Your
20 Honor's decision in Cohen. If Congress has made a clear
21 choice, a Court must enforce Congress' will. Congress has
22 made a clear choice. In SIPA, they said that state law
23 controls. And that's really functionally no different than
24 what Butner says. And Congress has also in 29(b) said that
25 a victim of a securities fraud can enforce any contractual

1 rights that it has.

2 And so --

3 THE COURT: That's why I asked you about the
4 contractual rights --

5 MR. KIRBY: Well, Your Honor --

6 THE COURT: -- as opposed to statutory rights.

7 MR. KIRBY: -- they are both -- well, statutory
8 rights, I think, are stronger than contractual --

9 THE COURT: Okay. But 29(b) deals with the
10 enforcement of contractual rights. And my understanding,
11 your argument is that you had a right under state and
12 federal law but not necessarily the contract --

13 MR. KIRBY: It rises out --

14 THE COURT: -- to retain -- to get and retain a
15 fictitious profits.

16 MR. KIRBY: It's not -- it (indiscernible) doesn't
17 sound in tort; it sounds in contract. That's why we have
18 asserted throughout our papers that those are contractual
19 rights.

20 THE COURT: But how can you have a contractual
21 right to get money that's not in your account?

22 MR. KIRBY: Your Honor, that's not what the state
23 law provides. State law doesn't say that the money is not
24 in our account. Our state law gives us the right if there
25 is a securities entitlement reported to the customer.

1 That's a basic federal law.

2 THE COURT: But it's not -- it's not based on your
3 customer agreement.

4 MR. KIRBY: It is because the customer agreement
5 contemplates that there will be a report of securities --
6 periodic report of securities. And that's part and parcel
7 of the contract because when the customer signs the
8 agreement, there's transactions to be done in the future.
9 And so, the only enforceable right that the customer has,
10 based upon that contract, is the reported securities
11 entitlements. And so when the securities laws recognized
12 that you're entitled to a securities entitlement payment,
13 that sounds in contract; that's not tort. And so, we assert
14 that those contractual rights are legally enforceable.

15 But -- and so that's why when -- we don't think
16 it's consistent with the mandate from the Second Circuit, in
17 546(e), to retrieve those settlement payments as anything
18 other than valid at the time. And that's the only question
19 that the Bankruptcy Code asks. And it's for that reason we
20 think that the mandate of the Second Circuit supersedes
21 anything that Judge Rakoff said in the antecedent debt
22 decision.

23 Now let me also address -- because that's
24 fundamentally, in the antecedent debt decision, the basis
25 for his decision that there were not contract -- there were

1 not legally enforceable rights. That's the basis in my
2 suggestion to Your Honor why those (indiscernible) cases
3 don't apply because the customer did not have legal
4 enforceable rights. The difference here is our client had
5 legally enforceable rights at that time. Back to Judge
6 Breyer's analysis in Shar that if you have valid rights at
7 the time, fraudulent transfer law doesn't apply.

8 Which really gets to what the trustee's really
9 arguing. We've heard the term fictitious profits. We said
10 in our papers there were, you know, 50 times. We've heard
11 it 20 times this morning. If you read the statutes, you
12 will find nowhere the term "fictitious profits".

13 THE COURT: But, Mr. Kirby, there's a lot of terms
14 you don't find in the statutes of the cases used to -- in
15 interpreting a statute.

16 MR. KIRBY: But let me say what is --

17 THE COURT: You don't find a net winner and net
18 loser in the statute either but it's been accepted by the
19 Second Circuit.

20 MR. KIRBY: Only for determining net equity claims
21 in the SIPA case.

22 THE COURT: I understand. But my point is there
23 are words or phrases that are commonly used that don't
24 appear in the statute.

25 MR. KIRBY: What the trustee is seeking to do in a

1 -- if he can't get it under the avoidance provisions, he's
2 seeking as an equitable matter to recover or -- he uses the
3 term in his brief, disgorge, fictitious profits.

4 THE COURT: Well, he can only proceed under the
5 avoidance provisions.

6 MR. KIRBY: And my point exactly. What he is
7 essentially trying to do is do an end run around the
8 avoidance provisions, what JPMorgan said he cannot do. He
9 does not have the power to pursue a claim for disgorgement
10 of fictitious profits. He only has the power to avoid
11 transfers that would invalid at the time. He cannot win
12 that case. So what he resorts to the language "fictitious
13 profits". My disgorgement of fictitious profits. We've
14 heard Mr. Bell here this morning talking about all the
15 victims.

16 That is why we cited to the Court the Fairfield
17 Greenwich case because it's so important. What Fairfield
18 Greenwich holds is that until there's avoidance and
19 recovery, SIPA doesn't apply. It doesn't control. The
20 Bankruptcy Code provisions apply. And it is that which --
21 those decisions which we believe, as we set forth in our
22 papers, govern this case.

23 And, you know, Your Honor, I'd like to address --

24 THE COURT: But how could SIPA not apply until
25 avoidance and recovery if it's SIPA that gives the trustee

1 the power to avoid the transaction in the first place where
2 it didn't exist outside of SIPA?

3 MR. KIRBY: That's the special provisions of
4 8(c)(3) which I mentioned to you it's the one provision that
5 gives the trustee standing. But that -- but the statute
6 simply adopts and incorporates the Bankruptcy Code.

7 THE COURT: Yeah. But that -- Fairfield was the
8 situation where the trustee was trying to stop a settlement
9 with Merkin or with the Fairfield Funds arguing that somehow
10 it was going to make them unable to pay the trustee should
11 the trustee prevail. This is a different case.

12 MR. KIRBY: Well, yes. But the principle of what
13 they're saying is, is that until there is a recovery under a
14 SIPA statute, you don't worry about how -- the net equity
15 principles and what --

16 THE COURT: Well, certainly, for the purposes of
17 injunctive relief to prevent the settlement, that would be
18 true.

19 MR. KIRBY: But it speaks to (indiscernible)
20 principle. Okay? Which is that their effort to sort of --
21 and somehow suggest that Bankruptcy Code has been amended or
22 changed because this is a SIPA case, that's just flatly
23 contrary to any normal statutory construction.

24 We cite the cases about when you have two federal
25 statutes, the Bankruptcy Code and SIPA. And you have to

1 find an irreconcilable conflict if you're going to say that
2 somehow the Bankruptcy Code value defense has been written
3 out of the statute. And the answer to that is, is there's
4 no -- they don't even argue that there's an irreconcilable
5 conflict. They argue that there's an implied repeal of the
6 value defense in order to make SIPA -- the SIPA victims
7 whole. That's not the norms of statutory construction.

8 THE COURT: Yeah. But Judge Rakoff decided that
9 that's not implicated by the Fishman decision --

10 MR. KIRBY: Yeah. But it is --

11 THE COURT: -- or the Fairfield decision.

12 MR. KIRBY: -- directly implicated by the SIPA --
13 the Fishman decision. And that's why we say it's part of
14 the mandate because what they said is when you're
15 interpreting a Bankruptcy Code, we look only to the
16 Bankruptcy Code. We don't look to SIPA. That's the -- that
17 is part of the (indiscernible). And that means it's not
18 just what they said but what's implicit in that. And I read
19 you the appropriate portion.

20 Your Honor, I would like to address for a moment -
21 - you know, we were not parties to Cohen. But I think that
22 there is a way for Your Honor, should it choose to, to grant
23 our client's motion without revisiting your Cohen decision.
24 And that is because we've asserted two defenses which were
25 not asserting in Cohen. The 29(b) defense which I identify

1 and the 28(a)(2) defense statutory right that gives us the
2 right to payments. Our state law preserves expressly our
3 state law rights and remedies. And the trustee has
4 stipulated the factual foundation of both of those statutory
5 defenses.

6 And finally, we have asserted the statute of
7 repose. And Cohen does not address the statute of repose.

8 THE COURT: Was that asserted before Judge Rakoff?

9 MR. KIRBY: Not as a statute of repose. It's been
10 asserted as a defense.

11 And, Your Honor, what -- even if Judge -- you
12 know, let's assume for a moment that Judge -- he does
13 address the reset to zero or how ever it was phrased at that
14 time. We now have the CalPERS decision. The basis for
15 Judge Rakoff's decision to not reject the two-year reach-
16 back provision is he says it's not equitable. That's now
17 foreclosed by the CalPERS decision. CalPERS is explicit
18 that the Court has no power to disregard a statute of repose
19 as a matter of equity. So to the extent that Judge Rakoff
20 addressed that issue, and he did, in the reset to zero
21 argument, that has now been superseded. Which brings me
22 back to what I suggested --

23 THE COURT: Are you referring to 546(a) that
24 limits the trustee to bringing an action into yours --

25 MR. KIRBY: Pardon?

1 THE COURT: Are you referring 546(a) in your
2 statute of repose argument?

3 MR. KIRBY: Right. 548(a) -- 548(a). 546 is a
4 statute of limitations. 548 is actually a substantive
5 limitation on the trustee's --

6 THE COURT: But he's only suing to recover two-
7 year transfers, right?

8 MR. KIRBY: He is. But he's disregarding the
9 other part of the statute which is that there were
10 obligations incurred that were legally enforceable. And
11 what the trustee has done is ignore one-half of the statute.
12 He's not brought in our client's cases a claim to avoid
13 obligations. He did, in the Lowry (ph) case, amend his
14 complaint but then subsequently dismissed those with
15 prejudice.

16 And so, our view is, is that the trustee's efforts
17 to pursue these claims and his appeal to equity and fairness
18 makes no sense when there's a statute gives him a right to
19 avoid the underlying obligations themselves. And he's never
20 elected to pursue that.

21 THE COURT: Well, I think his argument was there
22 were no underlying obligations.

23 MR. KIRBY: Well, if --

24 THE COURT: And if he's correct, he doesn't have
25 to avoid an obligation that is not enforceable under

1 nonbankruptcy law.

2 MR. KIRBY: I agree. But it is enforceable under
3 nonbankruptcy law because the Second Circuit has already
4 said that in the 546(e) decision. His obligation -- and
5 state -- and as I said, the federal securities laws
6 expressly preserves that (indiscernible).

7 So it's our view that the statute of repose,
8 putting aside value, and Judge Rakoff's decision on scope of
9 the reach back powers is no longer valid because of the
10 CalPERS decision. And every bankruptcy court decision that
11 has addressed the issue of whether that is -- in 548, that
12 two-year reach back limit is -- they've all said that those
13 are statutes of repose. We cite 10 cases in our papers on
14 that point.

15 They point to a Connecticut case that was decided
16 years before. All the Courts say that's an outlier and it
17 really -- you can read the decision. It talks about a
18 statute of limitations. But the limitations provision's in
19 546(a)(1). The substantive limitation on the trustee's
20 powers is in 548(a)(1). They can only go back two years.
21 And the statute says obligations incurred or transfers made.
22 He's pursuing the transfers but he's only elected to pursue
23 half of the remedy. He needed to avoid the obligations.

24 THE COURT: Only if the obligations are valid in
25 the first place.

1 MR. KIRBY: And we've spoken to that, Your Honor.

2 THE COURT: Yes.

3 MR. KIRBY: Okay?

4 THE COURT: Why don't you wrap it up and I'll hear
5 rebuttal.

6 MR. KIRBY: Thank you.

7 Your Honor, what we would ask the Court to do is
8 to enter propose findings of fact and conclusions of law
9 that would grant our client's summary judgment on two
10 points: on the value defense and on their statute of repose
11 defense. And so we ask the Court in each case to enter
12 judgment on behalf of our clients and the proposed findings
13 of fact and conclusions of law on that point.

14 Thank you, Your Honor.

15 MR. MURPHY: Your Honor, I will be brief. I will
16 just address several points that were made here.

17 THE COURT: Well, the principal argument is that
18 the Fishman case -- and it's referenced to UCC Article 8,
19 Section 501 -- 8-501 -- recognized that at the time of the
20 transfer there was a valid debt. And you have to look to
21 the time of the transfer to determine whether or not there
22 was a valid debt. And this changes the result or -- as it
23 existed at the time that Judge Rakoff the antecedent debt
24 decision. I know that Mr. Kirby's clients disagree with the
25 antecedent debt decision when it was made for many reasons.

1 But at least after that, at this particular statute -- this
2 particular decision changed that result. Why don't you
3 address that?

4 MR. MURPHY: Okay, Your Honor. The 546(e)
5 decision focused on whether these particular defendants and
6 the other defendants like them get the benefit of the
7 protections of the safe harbor. That's what the Second
8 Circuit was looking at at the time. They were looking at
9 the Cal. opening documents and the trading agreements and
10 they decided, as you mentioned before, Your Honor, under a
11 very broad definition, whether they would get the coverage
12 of that safe harbor.

13 Same thing with the settlement payment. Also a
14 very broad definition under that statute. That's what the
15 Second Circuit was looking at. And the Second Circuit
16 determined in that situation, it gave the customers the
17 protection of the safe harbor. And while it was contrary to
18 the goals of SIPA, this was a very clear protection; it was
19 a very clear statute. And this was the more specific
20 statute that controlled.

21 The Second Circuit decision did not address value.
22 It did not address -- it did not state in any way that these
23 customer statements indicated valid securities transfers.
24 And it did not state that it constituted valid securities
25 obligations to these customers. In no way did it do that.

1 With respect --

2 THE COURT: Well, it did say that Article 8
3 "written crediting of securities to impress them as
4 (indiscernible) creates an enforceable securities
5 entitlement".

6 MR. MURPHY: The securities contracts here, Your
7 Honor -- the Second Circuit said it was not endorsing the
8 validity of these securities contracts. So how ever they
9 phrased it there, they ultimately said they were not
10 agreeing with Madoff's fraud. They were not giving credence
11 to it in any way. They did get the benefit of the safe
12 harbor but only to that extent.

13 The defendants raised as well, I would note, just
14 separately in the antecedent debt decision that this Court
15 was discussing at length -- I went back while you were
16 discussing with Mr. Kirby. The securities law in Section
17 29(b) and Section 28(a), those sections were specifically
18 raised in the brief filed by Mr. Kirby in antecedent debt.
19 I have a copy here if I can hand it up.

20 THE COURT: I have it.

21 MR. MURPHY: You do. Okay.

22 I would specifically raise to Your Honor on pages
23 -- at least pages 4, 8, 9 and 17 of that brief. This is --
24 they had their chance to argue, Your Honor -- this is one of
25 the issues that was withdrawn, the withdrawn antecedent debt

1 issue, as Judge Rakoff defined them, was the second -- we'll
2 use the second prong: "whether and to what extent
3 obligations incurred by Madoff securities may be avoided by
4 the trustee including whether they were exchanged for value
5 such as antecedent debts owed to the antecedent debt
6 defendants.

7 THE COURT: But the trustee never avoided those
8 obligations003F

9 MR. MURPHY: The trustee never avoided those
10 obligations, Your Honor. But he didn't have to. They
11 weren't valid obligations. The district court made that
12 determination.

13 And the point is, the issue was raised at that
14 time. Defendants could have raised any issue that they
15 wanted to as to whether these obligations were valid or not.
16 Whether Judge Rakoff specifically spoke about it --

17 THE COURT: Well, did Judge Rakoff say they
18 weren't valid obligations or that to the extent they were
19 obligations, there would have been claims against the
20 general estate and that they still existed and couldn't
21 basically set off those obligations against the net equity -
22 - or against customer property.

23 MR. MURPHY: That explanation is fine as well,
24 Your Honor, all because we're saying to the extent that
25 there are any obligations, they don't qualify as value -- as

1 against the customer property estate.

2 We're not writing on a blank slate here, clearly.

3 And this is a SIPA case. It's not a bankruptcy case. So
4 you cannot simply divorce SIPA's overall goals and the
5 statutory provisions from the Bankruptcy Code's provisions.
6 They're incorporated to the extent consistent with SIPA.

7 I would mention Mr. Kirby raised the CalPERS
8 decision. That CalPERS decision didn't address 548(a). It
9 doesn't apply here. But even if it did, the trustee is
10 netting in how he comes to whether someone is a net equity
11 holder, net loser or net winner, or whether there's an
12 obligation owed to the estate is not affected. CalPERS
13 recognized that Courts can extend repose periods based on
14 equitable principles. But whether it's a statute of repose
15 or not -- and in this district it appears that it's not.
16 There's a bankruptcy court decision in Connecticut which
17 indicated it isn't.

18 But regardless of whether it is or it isn't,
19 that's not what we're doing here. The trustee's netting
20 method is consistent. You calculate value by netting
21 deposits and withdrawals which is not constrained in any way
22 by Section 548(c). And we also -- our methodology doesn't
23 involve the application of equitable tolling in any way or
24 any other type of tolling that would extend our right to
25 avoid beyond the reach-back period. The trustee is only

1 going back two years here. So it doesn't implicate any of
2 the concerns or finality with regard -- of CalPERS we're
3 talking about.

4 The statute of repose argument -- in one form or
5 another, the statute of repose argument was raised by Mr.
6 Kirby in the antecedent debt decision -- in their briefing -
7 - excuse me -- a brief at page 39 to 40. You will see that
8 reference the statute of repose. I submit to you that
9 whether Judge Rakoff explicitly expounded upon any specific
10 issue in that decision or not, those were issues that he was
11 aware of and faced because he had these briefs and that is
12 what he was considering.

13 With respect to the option here to enforce a
14 contract, Your Honor -- and Mr. Kirby suggests that he
15 should be able to enforce what he says is the contract, his
16 right to these payments because he was an innocent customer
17 as against Bernard Madoff. But the reality is that while
18 Courts have permitted that in a situation where there is an
19 innocent party versus a wrongdoer, that would -- that policy
20 here would further none of the policies that favor
21 enforcement to an innocent party to a legal bargain. And a
22 war of damages here in this instance, Your Honor, would have
23 the effect of harming other innocent creditors -- excuse me
24 -- other innocent customers. This was a situation --

25 THE COURT: Does SIPA specifically preclude a

1 broker from using customer property to pay general
2 (indiscernible)?

3 MR. MURPHY: In -- after a liquidation? Yes.

4 THE COURT: Well, even before liquidation.

5 MR. MURPHY: I believe so.

6 THE COURT: I assume -- well, SIPA would take any
7 liquidation but are there statutes under the federal
8 securities laws that prevent a broker from using customer
9 property to pay claims of the brokerage?

10 MR. MURPHY: I'll have to defer to Mr. Bell on
11 that. But I could tell you at this point that in the
12 situation that we find ourselves in here, which is a
13 liquidation, customer property -- the trustee is authorized
14 to gather and collect and --

15 THE COURT: I'm asking you a different question
16 which goes back to the time that the payments of the
17 customer property was used to pay noncustomer obligations
18 that was in a violation of federal securities laws.

19 MR. BELL: You want me to answer now or do you
20 want it later?

21 THE COURT: Well, what I would ask is, you can
22 supplement the --

23 MR. BELL: No. I can answer the question when I
24 get up, Your Honor --

25 THE COURT: All right.

1 MR. BELL: -- if you wish.

2 MR. MURPHY: And subject to potentially --

3 THE COURT: You're being superseded by Mr. Bell.

4 MR. MURPHY: Superseded or perhaps giving the
5 Court some follow-up, if necessary.

6 The concept I was just talking about momentarily
7 ago, Judge, about enforcing a contract here would be
8 improper because you're harming other net innocent
9 customers. J&B v. Brown, Fifth Circuit decision, 2014,
10 addressed that.

11 I want to turn to the Boston Trading case that Mr.
12 Kirby was referring to. In that case, then Judge Breyer --

13 THE COURT: He's still a judge.

14 MR. MURPHY: Or Justice Breyer. Still a judge,
15 correct.

16 THE COURT: That's because there's no justice
17 until the Supreme Court.

18 MR. MURPHY: Generally -- what he said that
19 generally fraudulent transfer laws not concerned with
20 prioritizing anybody. It's just to see that somebody -- a
21 debtor who has limited resources uses those resources to pay
22 the sum of his creditors. That's the general concept. But
23 the reason that that doesn't work here is that SIPA is
24 different. SIPA does prioritize the customer property
25 estate and does give them the right to get the return of the

1 customer property and have those claims paid to the extent
2 that they're net equity. So I think that that case is
3 really inapposite in this situation in a SIPA case.

4 There -- as this Court indicated, I don't think
5 that the Second Circuit ever said that these are enforceable
6 contracts in any way. 546 did not hold that.

7 THE COURT: Well, it's got that parenthetical I
8 read which suggests that. It's an enforceable securities
9 entitlement.

10 MR. MURPHY: The reality is here, Your Honor,
11 those customer statements reflected impossible trades. I
12 think what Mr. -- taking Mr. Kirby's argument to its logical
13 conclusion, his suggestion is that if in one month his
14 clients perhaps had \$10 million in the bank -- on the
15 customer statements and the following month it showed -- the
16 customer statements showed \$500 million on it and his
17 clients withdrew \$500 million, they had a right to do so.

18 THE COURT: That's the argument.

19 MR. MURPHY: Right. And that's not the case, Your
20 Honor. Our argument is that that can't be possible. This
21 Court should not lend itself in aid of a fraud where it's
22 going to harm innocent customers. And that's what we're
23 talking about here.

24 THE COURT: I'd like to hear from Mr. Bell later
25 when you're done.

1 (Pause)

2 MR. BELL: Forty-seven years ago, Congress enacted
3 the Securities Investment Protection Act on December 3rd and
4 President Nixon signed it.

5 THE COURT: You don't know the exact number of
6 days? I got you on that one.

7 MR. BELL: More than half my lifetime. And I have
8 spent 44 -- about 40 years interpreting the statute and
9 speaking with judges regarding it.

10 In Section 7 of the original statute, there was a
11 mandate that the Securities and Exchange Commission create a
12 customer protection law. 1972, the Commission released that
13 rule and the guidance that they had with that discussed the
14 creation of the Securities Investor Protection Act and the
15 creation of Securities Investor Protection Corporation and
16 the whole purpose that they set up to get customers back
17 their assets when brokers were not able to do so, mainly
18 insolvency or, as in this monster case, (indiscernible).

19 So that rule has applied throughout. And what is
20 that rule? That is the -- the way I look at it, is the pre-
21 SIPA liquidation lock up the money rule because there are
22 formulae that brokers have to follow to have blocked bank
23 accounts and fully paid securities. So there's a formula
24 that the Commission rules on and follows through and
25 enforces over the period of time.

1 In this liquidation, the amount of money that
2 should have been locked up was \$20 billion. The amount that
3 was locked up was 250 million. So clearly, there was a
4 failure to comply with the rules.

5 To answer your specific question, brokers are not
6 allowed to go into that pot and comingle because Congress
7 had a clear intent in having --

8 THE COURT: Well, what prevents it from being a
9 statute, though, or under a regulation?

10 MR. BELL: Well, then they get into -- the SEC
11 steps in and slaps their wrist or does more. In fact, I
12 know recently Merrell Lynch wasn't complying with it and the
13 Commission --

14 THE COURT: But that's got to be pursuant to some
15 rule or statute.

16 MR. BELL: There's a rule, 15(c)3-3. That's the
17 pre-SIPA liquidation customer property rule, at least in my
18 humble opinion because what happens is when I filed this
19 case, I should have walked in. And we get a trustee
20 appointed and the trustee should have called JPMorgan Chase
21 and said give me the \$20 billion you got backed up. Lo and
22 behold, when we talked to the general counsel and president,
23 they had \$250 million. You know, so --

24 THE COURT: But is there a rule or a statute that
25 absolutely precludes a broker from using customer property

1 to pay debts of the brokerage?

2 MR. BELL: That's the assistance of the SEC to
3 show that there has to be a liquidation.

4 THE COURT: Okay. Let me -- maybe the better way
5 to deal with it since I've raised it --

6 MR. BELL: Is to get a briefing.

7 THE COURT: -- is for each side to submit a letter
8 brief on the issue of whether or to what extent a broker
9 deal pre-SIPA pre-liquidation can or cannot use customer
10 property to pay debts of a brokerage.

11 MR. BELL: Yes, Your Honor.

12 THE COURT: 'Cause that's really to a large
13 extent, what we've been talking about with the
14 (indiscernible) profits and --

15 MR. BELL: Well --

16 THE COURT: -- whether these claims would have
17 been claims against the general estate.

18 MR. BELL: We start to talk it somewhat in our
19 brief but I will add some more.

20 THE COURT: It will be helpful to have it. And,
21 as I said, since I raised it, I'll give the other side a
22 chance to --

23 MR. BELL: Simultaneous briefing?

24 THE COURT: Yeah. I want them, say, within 14
25 days.

1 MR. BELL: Let me --

2 THE COURT: Within 14 days.

3 MR. BELL: Let me --

4 THE COURT: It can be by letter briefs, not
5 exceeding five pages.

6 MR. BELL: Yeah. If I might just make my comments
7 on what was said and replied.

8 SIPA trustee deals with two kinds of claims, not
9 only customer claims but general unsecured claims. And in
10 the Rosenman family case cited in our materials back in
11 2010, the Circuit so held.

12 New York Law writes -- or are really general
13 creditor claims. And I would cite the Court to the decision
14 six months ago in Sager. If I might --

15 THE COURT: But what I think Mr. Kirby is arguing,
16 what I understand the arguments -- pre-liquidation -- a pre-
17 SIPA liquidation, there are no two mistakes. That's why I
18 asked the question about --

19 MR. BELL: That's what --

20 THE COURT: -- what the rules were that were --

21 MR. BELL: That's what Bisconzi (ph) was about
22 against Lehman. And in our case, we cite -- we give you a
23 Lehman cite post the SIPA liquidation where it's a general
24 creditor right, not a customer right, because that's the
25 important point. This Court has opined on that. Judge

1 Rakoff has opined on that. You look upon different natures
2 of a proceeding. The Circuit -- that's why I started with
3 Rosemann. You know, and if you look at Sager, I would just
4 call the attentions to the Sager decision at page 5 of the
5 slip opinion, at 697 Fed. App. 708, you will see the Court
6 said, "To the extent New York" -- well, first of all, "Under
7 the Net Equity Decision, this Court held that the proper
8 measure of a customer's assets under SIPA is not determined
9 by reference to BLMIS' falsified account statements but
10 instead by reference to a customer's cash deposits and
11 securities." He was referring to net equity.

12 THE COURT: So should the rule be different --

13 MR. BELL: Well --

14 THE COURT: -- "in a case that doesn't involve net
15 equity but is a fraudulent conveyance.

16 MR. BELL: If I might, okay? To continue with
17 what the Circuit wrote six months ago:

18 To the extent that New York law could possibly be
19 read to suggest a different measure of assets of a BLMIS
20 customer, it conflicts with this Court's interpretation of
21 SIPA and is thus suspended." And they refer to Butner. I
22 did hear of Butner. And here's the Circuit six months ago
23 referring to that. And you put that together with Rosemann
24 and the long line of cases. And you go to Samsal (ph) a
25 1946 Supreme Court decision which is also referred to in our

1 case. And the other SIPA cases we cite.

2 It's not -- "Further -- I continue -- "Further" --
3 that was editorial comment.

4 "Further, it is not clear to this Court that the
5 New York Uniform Commercial Code would provide for the
6 relief Ryan Appellants seek given the more specific
7 provision dealing with insolvent debtors and SIPA". When
8 you read the Uniform Commercial Code, and we cite to that,
9 it excludes out this liquidation proceeding and all
10 liquidation proceedings under a statute that governs this
11 liquidation proceeding, the Securities Investor Protection
12 Act.

13 So clearly, you know -- I'm sorry, Your Honor.
14 That's at page 18 of our brief.

15 One note I would raise. And I did hear a lot of
16 28(a) and 29. But if you look at page (ix) of the Appendix
17 of the brief submitted in the antecedent debt matter in June
18 of 2012 by Mr. Kirby on behalf of all the withdrawing
19 defendants, you will see the reference to 15 United States
20 Code, otherwise the 34 Act, and 28(a) is *passem*, meaning
21 throughout, and 29(b) is 4, 9 and 17.

22 So clearly, these arguments were made to the
23 district judge whose decision I quote, Your Honor, sounds
24 like a mandate.

25 Thank you, Your Honor.

1 THE COURT: Thank you.

2 Now (indiscernible) very briefly, Mr. Kirby.

3 MR. KIRBY: Yes, Your Honor.

4 On the issue of these were avoidance claims were
5 not SIPA claimants. You heard counsel say we should not be
6 entitled to an award of damages. That's not what we're
7 talking about. This is an avoidance claim. He seeks -- he
8 has an affirmative obligation to recover. We have asserted
9 the defense. This is not -- we're not seeking a general
10 unsecured claim. We will have paid what we were legally
11 entitled to at the time.

12 With respect to Sager, I mentioned this earlier,
13 that's a SIPA net equity where we're dealing with how the
14 Court treats a net equity claim, this is a avoidance claim
15 and that has no bearing on the Court's analysis because that
16 is addressed in Section 546(e) decision where they said when
17 we're dealing with the Bankruptcy Code, the Bankruptcy Code
18 controls.

19 Counsel mentioned Judge Breyer's decision. I
20 commend the Court to sort of look through that analysis and
21 the following analysis in Shar because what you focus on and
22 what we've established, we believe for basis of summary
23 judgment, that there were valid claims at the time and they
24 had legally enforceable rights at the time of those
25 transfers but the trustee's -- the obligation -- let me just

1 put it this way. The duty of the trustee was to set aside
2 those obligations, if he could, not having brought that
3 claim, the transfer set at the times satisfied an
4 outstanding obligation. And we think that ends the inquiry
5 as to the value defense.

6 On the statute of repose, I would simply say this.
7 Counsel suggests that somehow if there is a just a
8 bankruptcy court decision in this district that is contrary
9 to the many bankruptcy court decisions about what it -- the
10 reach back limit is not a statute of repose and should be
11 construed as not a statute of repose in this district.

12 Your Honor, that's inconsistent with the analysis
13 in CalPERS and the related case which we cite in our papers,
14 CTS v. Waldburger that looks at what is a statute of repose
15 and what isn't. We've analyzed that. They don't argue that
16 those -- that that analysis is wrong. They say, oh, by the
17 way, it was the district court -- a bankruptcy court
18 decision. That doesn't even address it when you look at it.
19 But all the bankruptcy courts that have recognized it as an
20 outlier. We don't think that they have a net, the defense -
21 - that the statute of repose governs here. And so,
22 therefore, we ask the Court to enter proposed findings and
23 conclusions.

24 THE COURT: Thank you. One other question I have
25 is the issue I raised is whether, aside from fraudulent

1 transfer statutes, a broker has the right to recover
2 payments that the broker made out of customer funds to
3 satisfy general obligations of brokerage.

4 MR. BELL: And you mean in a pre-SIPA mode.

5 THE COURT: In a pre -- in a non-SIPA --

6 MR. BELL: Yes.

7 THE COURT: -- nonbankruptcy --

8 MR. BELL: Yes, Your Honor.

9 THE COURT: -- situation.

10 Okay. Thank you very much. Thank you for the
11 arguments. I'll reserve decision. I look forward to
12 receiving your letter briefs on that issue.

13 MR. KIRBY: Your Honor, excuse me. About what
14 should we -- (indiscernible).

15 THE COURT: I said two weeks.

16 MR. KIRBY: Two weeks.

17 THE COURT: I mean, if you want to do it in --

18 MR. MURPHY: Fourteen days.

19 THE COURT: Fourteen days --

20 MR. KIRBY: Fourteen days. Okay. That's fine.

21 I'm sorry.

22 MR. MURPHY: Five pages or less.

23 THE COURT: All right. Thank you. Thank you very
24 much.

25 MR. MURPHY: Thank you, Your Honor.

1 (Whereupon, these proceedings were concluded at 11:42
2 a.m.)
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

We, Dawn South and Lisa Beck, certify that the foregoing
transcript is a true and accurate record of the proceedings.

Dawn South

Certified Electronic Transcriber

Lisa Beck (CET*D-486)

AAERT Certified Electronic Transcriber

Date: December 7, 2017

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

[& - admitted]

Page 1

&	2008 5:20	501 59:19	absolutely 25:12
& 4:5	2010 71:11	546 8:10 9:7,18	69:25
1	2012 25:1 73:18	10:17,19 11:1	accept 27:24
1 4:16 22:12,25	2014 21:8 23:18	22:9,17 23:13	45:22
26:25,25 48:14,15	66:9	26:15,22,23 27:3	accepted 52:18
48:20 58:19,20	2017 1:19 10:3	27:6 30:3 31:14	account 5:11,12
1,391 21:7	78:15	31:19,20 38:3	9:4,4 10:3 13:21
1,512 21:6,25 25:1	250 69:3,23	39:1 40:16 47:14	23:1 26:13 37:5,6
10 58:13 67:14	28 29:9 33:13	48:1,2,12 51:17	37:20 41:21 50:21
10-04350 2:2	46:11 56:1 61:17	56:23 57:1,3 58:4	50:24 72:9
10-04387 2:2	73:16,20	58:19 60:4 67:6	accounts 6:6
10-04488 1:9	29 24:9 34:3,5,15	74:16	14:19 68:23
10-05110 2:2	34:20 35:3 41:9	548 4:16 9:20,21	accurate 78:4
1000 3:21	43:25 46:12,14	9:22,24,25 11:3,4	act 23:25 24:8,21
10004-1408 1:17	49:24 50:9 55:25	13:13 14:23,24	25:2 29:5 33:16
10111 3:5	61:17 73:16,21	17:3 22:12,25,25	41:9 42:11 45:7
10:02 1:20	3	26:10,20,25,25	68:3,14 73:12,20
11 5:20 15:19	3 27:6 39:10,13	27:1,9 39:9 48:14	action 19:16 25:6
39:12	54:4	48:15,20,22 57:3	38:16 56:24
11501 78:25	3,282 20:25 21:21	57:3,4 58:11,20	actions 4:11 7:24
11th 6:2	22:15	63:8,22	22:12,13 38:15
12 34:10	3-3 69:16	6	active 49:16
14 70:24 71:2	300 78:24	6 1:19 34:10 39:8	actual 4:16 5:21
15 25:4 69:16	330 78:23	697 72:5	add 12:3 17:13
73:19	34 23:24 24:8,21	7	70:19
15th 25:1	25:2 41:9 42:11	7 68:10 78:15	additional 6:7
1667 3:21	49:16 73:20	708 72:5	address 8:8 23:6
17 61:23 73:21	39 64:7	8	32:23 44:3,8,11
18 73:14	3rd 68:3	8 28:18 37:15	45:18 47:19 51:23
1934 29:5 33:15	4	39:10,13 47:8	53:23 55:20 56:7
1946 72:25	4 61:23 73:21	54:4 59:18 61:2	56:13 59:16 60:3
1970 25:4	40 22:14 64:7 68:8	61:23	60:21,22 63:8
1972 68:12	422 40:9,13	8-501 59:19	75:18
1995 18:17	44 68:8	815 3:12	addressed 19:3
2	45 3:4	9	22:22 23:4,5
2 29:9 33:13 46:11	486 78:10	9 61:23 73:21	47:12 56:20 58:11
56:1	5	a	66:10 74:16
20 52:11 69:2,21	5 36:25 72:4	a.m. 77:2	addresses 44:2
20006 3:13	50 52:10	aaert 78:11	47:7,8
20006-1620 3:22	500 21:13 67:16	able 64:15 68:17	adjudicate 29:17
2002 6:2	67:17		admitted 5:17
			18:7,8

[adopted - authorized]

Page 2

<p>adopted 43:3 adoption 11:20 adopts 54:6 adv 1:9 2:2 adversary 4:8 7:10 21:13 advisory 6:3 affirmative 4:24 17:4 26:6 34:7,21 34:23 41:10 43:24 74:8 affirmed 22:17 25:13,16 ago 18:23 21:6,7 22:2 23:12 25:1 66:7 68:2 71:14 72:17,22 agree 29:2 49:5,8 58:2 agreed 4:20 agreeing 36:11 61:10 agreement 28:9 28:12 37:1 41:19 51:3,4,8 agreements 36:12 36:14,22 60:9 agrees 13:8 ahead 30:15 32:22 38:23 aid 67:21 al 1:11 4:12,14 alike 13:2 allegations 43:8 allocation 21:16 allow 13:14 47:2 allowed 69:6 allowing 16:8 amend 57:13 amended 54:21 amount 43:16 69:1,2</p>	<p>amounts 13:23 analysis 19:14 30:4 39:25 43:3 43:14 52:6 74:15 74:20,21 75:12,16 analyzed 75:15 ancona 3:17 answer 27:25 28:4 32:5 36:17,19 55:3 65:19,23 69:5 antecedent 5:12 6:12,16,24 7:3,4,9 7:15,16,21,21,23 8:2,4,9 11:10,15 11:17,25 12:7 13:12,19,20,24 14:12,17,24 17:1 17:10 19:18 21:7 22:1 24:5,20 26:16,17 27:22 29:24 31:8,17 35:1,7 38:23 44:14 47:11 48:2 51:21,24 59:23,25 61:14,18,25 62:5 62:5 64:6 73:17 anybody 19:8 66:20 app 72:5 appeal 11:17 25:18 57:17 appear 52:24 appears 63:15 appellants 73:6 appendix 73:16 applicability 19:20 applicable 19:24 application 63:23 applied 16:18 17:5 68:19</p>	<p>applies 2:1 13:2 13:10 25:10 apply 10:24 18:14 22:3,7 25:5 26:7 26:24 35:10 38:19 39:25 43:13 44:6 48:4 52:3,7 53:19 53:20,24 63:9 appointed 69:20 approach 45:20 45:21 appropriate 37:3 37:6,8 55:19 approximately 22:13 arbitrarily 10:6 argue 13:11 39:16 39:18 55:4,5 61:24 75:15 argued 6:11 8:11 23:3 39:19,20,21 argues 35:16 arguing 22:24 27:23 34:8 52:9 54:9 71:15 argument 6:16 8:14,24 9:1,2 10:13 13:19 14:13 14:22,23 15:8,15 16:16,25 19:21,25 20:9 22:9 24:5 28:18 29:4,10,23 32:4 33:7,17,22 34:2,3 35:1,18 37:15 38:23 40:13 47:5 48:8,25 50:11 56:21 57:2 57:21 59:17 64:4 64:5 67:12,18,20 arguments 6:10 8:8 11:6,10,11,23 20:10,18 29:19 31:1,2 71:16</p>	<p>73:22 76:11 arises 39:10 arrangement 36:23 article 28:18 37:15 59:18 61:2 aside 45:13 58:8 75:1,25 asked 24:2 36:4 50:3 71:18 asking 30:18 37:18 65:15 asks 42:2 51:19 aspect 30:8 assert 5:6 14:11 51:13 asserted 26:6 34:6 41:9,10 50:18 55:24 56:6,8,10 74:8 asserting 19:5,6,8 55:25 assets 68:17 72:8 72:19 assigned 10:6 assist 10:9 assistance 70:2 assume 56:12 65:6 assumption 49:5 49:9 attached 37:1 attempt 12:5 17:14 29:3 attempted 17:18 attentions 72:4 attorney 3:11,20 attorneys 3:3 author 29:15 authorizations 9:5 authorized 65:13</p>
---	--	--	---

[available - c]

Page 3

available 12:17 41:4,5 avenue 3:12 avoid 7:14 10:18 13:17,23 15:23 16:14,21 27:4 53:10 54:1 57:12 57:19,25 58:23 63:25 avoidance 4:22 5:25 19:16 26:24 26:25 38:19 48:9 53:1,5,8,18,25 74:4,7,14 avoided 7:19 62:3 62:7,9 award 74:6 aware 19:24 64:11	bankruptcy 1:1 1:15,25 10:13,23 13:7 15:17,20 18:11 25:10 30:23 38:19 39:3,4,5,15 40:17,21 42:1,22 44:16 45:1 46:24 47:2,3 48:10 51:19 53:20 54:6 54:21,25 55:2,15 55:16 58:10 63:3 63:5,16 74:17,17 75:8,9,17,19 bargain 64:21 based 8:4 27:15 36:8 51:2,10 63:13 bases 43:18 basic 51:1 basically 11:5 12:23,25 18:10 24:3 41:24 62:21 basis 5:4 17:15 19:25 38:6 42:5 42:13 51:24 52:1 56:14 74:22 bearing 47:17 74:15 beck 2:25 78:3,10 behalf 6:20 21:19 59:12 73:18 behold 69:22 believe 9:3 17:2 26:7 30:17 39:2 53:21 65:5 74:22 bell 3:24 20:20,23 21:3,5 22:2,6,22 23:2 24:6,10,12 24:14,16,22,24 25:24 48:18 53:14 65:10,19,23 66:1 66:3 67:24 68:2,7 69:10,16 70:2,6	70:11,15,18,23 71:1,3,6,19,21 72:13,16 76:4,6,8 benefit 60:6 61:11 bernard 1:6 64:17 bernstein 1:24 better 70:4 beyond 10:18 13:3 19:7 29:24 63:25 billion 21:14 69:2 69:21 binding 13:22 bisconzi 71:21 bit 35:21 blank 63:2 blmis 4:17 5:21,24 6:1 13:22 14:10 18:24 28:2 36:5 37:19 72:9,19 blmis's 5:3 blocked 68:22 book 28:16 42:16 42:17 borrowed 49:16 borrowing 43:13 borrows 39:5 boston 35:23 43:2 43:17 66:11 bound 8:1 22:7 25:6 29:20 44:3 bowling 1:16 breyer 66:12,14 breyer's 52:6 74:19 brief 15:2 18:16 20:21 23:4,22 24:2,5 29:15,16 30:15 34:4 53:3 59:15 61:18,23 64:7 70:8,19 73:14,17	briefed 23:3 24:1 24:11,12,13,21 briefing 64:6 70:6 70:23 briefings 7:12 briefly 19:3 74:2 briefs 49:19 64:11 71:4 76:12 bring 19:11 38:15 38:16 bringing 21:13 56:24 brings 56:21 broad 49:10 60:11 60:14 broker 20:2 46:1 65:1,8 69:25 70:8 76:1,2 brokerage 14:19 65:9 70:1,10 76:3 brokers 68:17,22 69:5 brought 27:13 57:12 75:2 brown 66:9 bryer 35:22 38:25 46:25 bryer's 41:6 43:2 43:13 45:10 building 1:10 4:12 burden 4:23 5:14 business 6:3 46:2 butner 49:24 72:21,22
b	b 1:23 34:3,5,10 34:15,20 35:3 36:1 39:8 41:9 43:25 46:12,14 49:24 50:9 55:25 61:17 73:21 back 11:9,14 15:3 15:5 21:22 22:10 25:4 29:17 31:16 31:17 32:3,13 33:8 35:21 36:3 36:15 38:22,25 41:6 43:1 45:10 52:5 56:16,22 58:9,12,20 61:15 63:25 64:1 65:16 68:16 71:10 75:10 backed 69:21 bad 25:23 baker 3:2,10 4:5 balances 40:21 bank 43:6,12 67:14 68:22	c	c 3:1 4:1 9:18,21 9:24,25 11:1,4 13:13 17:3 26:10 26:15,20 27:1,9 36:1,2 39:10,13 48:22 54:4 63:22 69:16 78:1,1

[cal - complaint]

Page 4

<p>cal 60:9 calculate 63:20 calculated 32:9,12 calculation 19:16 call 72:4 called 69:20 calpers 56:14,17 56:17 58:10 63:7 63:8,12 64:2 75:13 carry 10:14 carved 22:25 case 1:9 4:22 5:14 6:22 8:12 12:5 13:1,10 14:7,9 17:11 19:10,12,14 20:7 21:11 22:21 23:17 26:7 27:7 28:24,25 29:5 31:23 32:6,7,7,12 33:2 35:23 38:8 38:11,12,13 39:21 42:9 43:8 44:17 44:17,18 45:22,24 46:9,17,19 47:11 47:15,17,19,25 48:5,6 49:12 52:21 53:12,17,22 54:11,22 57:13 58:15 59:11,18 63:3,3 66:11,12 67:2,3,19 68:18 69:19 71:10,22 72:14 73:1 75:13 cases 4:19 5:1 13:2 27:12 29:18 38:1 41:3 45:13 45:22 46:4,16 47:16,24 52:2,14 54:24 57:12 58:13 72:24 73:1 cash 72:10</p>	<p>cause 70:12 certain 37:2 certainly 18:14 40:9 44:3 54:16 certificate 11:17 certified 78:8,11 certify 23:19 78:3 cet 78:10 chance 61:24 70:22 change 9:17 47:1 changed 8:11 11:7 54:22 60:2 changes 59:22 charles 46:21,24 chase 69:20 choice 10:15 31:21 49:21,22 choose 34:14 55:22 circuit 8:11,17,19 9:3,5,15 10:4,12 12:23 13:5,6 18:17,23 22:11,16 22:19 23:4,5,7,10 23:12,16,19,21 25:16,20 27:11,14 28:19,23 30:3 31:18,24 32:8,13 32:14,21 37:17,22 37:25 38:24 39:1 39:20 40:1,4,6,8 42:7,8 43:3,11,20 44:10 47:12 48:18 51:16,20 52:19 58:3 60:8,15,15 60:21 61:7 66:9 67:5 71:11 72:2 72:17,22 circuit's 10:1 18:22 cite 31:23 33:1,2 35:17,20 54:24</p>	<p>58:13 71:13,22,23 73:1,8 75:13 cited 19:24 34:5 53:16 71:10 claim 12:14 13:15 15:13,13 17:6 38:9,10 39:11,24 40:7,7 42:23 43:10,12 45:2 46:7 53:9 57:12 74:7,10,14,14 75:3 claimants 16:13 42:25 44:18 74:5 claims 10:20 12:9 12:10,18,19,19 16:1,5,7,10,12,23 19:7,8 24:7 33:14 35:5 41:5 44:12 44:13,20,22 48:15 48:20 52:20 57:17 62:19 65:9 67:1 70:16,17 71:8,9,9 71:13 74:4,23 clear 10:15,19 18:23 23:24 41:3 44:19,19 49:20,22 60:18,19 69:7 73:4 clearly 18:18 19:17 22:16 23:4 24:25,25 25:7 27:21 45:13 63:2 69:3 73:13,22 client 28:3 52:4 client's 55:23 57:12 59:9 clients 26:6,9 31:15 38:10,10 41:11 42:3,14,21 42:24 43:24 44:17 45:4,5,25 46:10 46:13 47:18,24</p>	<p>48:1 59:12,24 67:14,17 code 10:13,23 15:21 18:11 25:2 25:10 38:19 39:3 39:4,6,15 40:17 40:21 42:1,22 46:24 48:10 51:19 53:20 54:6,21,25 55:2,15,16 73:5,8 73:20 74:17,17 code's 63:5 cohen 8:6,16 11:19 17:13,15 18:1 19:19 21:23 25:12,17 49:20 55:21,23,25 56:7 cohen's 17:19 collapse 5:3 16:19 collaterally 17:9 colleague 30:22 collect 65:14 come 13:6 36:3 comes 10:2 15:15 31:16,17 63:10 comingle 69:6 commend 74:20 comment 73:3 commenting 25:24 comments 71:6 commercial 73:5 73:8 commission 25:4 68:11,12,24 69:13 common 19:6 commonly 52:23 company 1:10 4:12 compelling 40:13 compensate 12:13 complaint 34:20 57:14</p>
--	--	--	---

[completely - court]

Page 5

completely 13:25 14:7,21 16:20	considered 8:14 11:5 14:18 15:7 32:11 44:7	49:25 50:4,8,10 50:18,20 51:14	24:13,15,19,23 25:23 26:2,5,14
comply 69:4		contrary 18:18	26:19 27:2,11,20
complying 69:12	considering 64:12	30:18 54:23 60:17	28:1,6,8,14,18,23
comprehensive 21:10	consistent 7:25 10:25 15:22 23:16	75:8	29:7,10,23 30:5,8
conceded 14:9 22:8 45:4	24:16 29:18 31:20 39:7 51:16 63:6	control 32:24,25 47:23 48:10,13 53:19	30:12,15,18,25 31:6,13,25 32:10 32:16,18,18,22
conceding 36:11	63:20	controlled 60:20	33:3,6,17,20,23
concept 15:2 66:6 66:22	consolidated 4:8 7:12 29:16	controlling 47:12 47:25	34:4,8,12,18,22 34:25 35:4,9,13
concerned 66:19	constitute 7:8 12:10	controls 49:23 74:18	35:20 36:3,10,17 36:20,25 37:11,14
concerns 64:2	constituted 60:24	conveyance 72:15	37:25 38:5,14,17
conclude 20:17	constitutes 8:12	convincing 40:14	38:20,22 39:7,16
concluded 77:1	constrained 63:21	copy 61:19	39:23 40:1,4,8,19
concluding 43:21	construction 18:20 39:14 54:23 55:7	corporation 3:19 21:20 68:15	40:23,24 41:14,17 41:23 42:2,9
conclusion 16:1 18:4 23:14 43:18 67:13	constructive 30:12	correct 25:12 33:21 40:9 57:24 66:15	44:11,22,25 45:12 46:21 47:5 48:4,4 48:13,17,22,25
conclusions 21:24 59:8,13 75:23	construe 26:21	correcting 49:18	49:4,8,21 50:3,6,9
confessed 23:18	construed 75:11	correction 9:23	50:14,20 51:2
conflict 10:12 11:1 16:2 55:1,5	consumers 12:13	could've 18:14	52:13,17,22 53:4
conflicts 72:20	contemplates 51:5	counsel 4:6 17:19 17:19 49:18 69:22 74:5,19 75:7	53:16,24 54:7,16 55:8,11 56:8,18 56:23 57:1,6,21
congregation 4:13	context 21:17 34:25	country 78:23	57:24 58:10,24
congress 10:15 16:24 18:13,18 40:21,24 49:20,21 49:21,24 68:2 69:6	continue 72:16 73:2	counts 4:16	59:2,4,7,11,17
congress's 10:16	continues 10:5	couple 38:1	61:2,14,20 62:7
connecticut 3:12 58:15 63:16	contract 9:6,6 28:13 34:16 37:16 47:14 49:11 50:12 50:17 51:7,10,13 51:25 64:14,15 66:7	course 34:24	62:11,17 63:16 64:25 65:4,6,15 65:21,25 66:3,5 66:13,16,17 67:4 67:7,18,21,24 68:5 69:8,14,24 70:4,7,12,16,20 70:24 71:2,4,13 71:15,20,25 72:5 72:7,12,14,25 73:4 74:1,14,20 75:8,9,17,17,22 75:24 76:5,7,9,15
connection 9:13 40:10	contractor 48:19	court 1:1,15 4:2,4 4:21 6:8,14,18,23 7:1,8,23 8:14,17 8:24 9:20,22,24 10:8,14,15 11:3,5 11:20,23 12:1,22 12:25 13:8,9 14:17 16:4,25 17:3,3,21,23 19:3 19:19,24 20:20 21:2,4 22:1,4,19 22:24 24:4,7,11	
consensus 13:8	contracts 8:20,20 28:6 37:17,19 43:19 61:6,8 67:6		
consider 7:12 9:11 35:12	contractual 36:6 37:5,7,10 41:11 41:15,17 46:14,18		
considerable 43:16			
consideration 12:16			

[court - demand]

Page 6

76:17,19,23 court's 8:5 11:14 11:15,16,18,20 72:20 74:15 courts 5:10 46:19 58:16 63:13 64:18 75:19 cover 44:2,2 coverage 60:11 create 23:9 29:1 68:11 creates 13:14 61:4 creation 68:14,15 credence 61:10 crediting 15:4 61:3 creditor 71:13,24 creditors 5:23 40:23 64:23 66:22 cremona 3:8 cronogue 3:16 cts 75:14 customer 6:6 12:11,12,20 13:15 16:9,22 17:6 18:24 19:1,15 22:20 28:9,12 34:15 36:12,14,22 37:1,2,13,23 38:6 41:19,19,25 44:15 46:5 50:25 51:3,4 51:7,9 52:3 60:23 62:22 63:1 64:16 65:1,8,13,17 66:24 67:1,11,15 67:16 68:12 69:17 69:25 70:9 71:9 71:24 72:20 76:2 customer's 37:5 72:8,10 customers 6:5 13:23 37:8 38:11 45:25 47:1 60:16	60:25 64:24 66:9 67:22 68:16 d d 4:1 78:10 damages 32:9,11 64:22 74:6 date 21:12 44:20 44:20 45:2,3 78:15 dawn 2:25 78:3,7 day 20:9,25 21:8 23:18 days 21:6,7,21,25 22:15 23:20 25:1 68:6 70:25 71:2 76:18,19,20 dc 3:13,22 de 11:21 deal 70:5,9 dealer 20:2 46:1 dealing 21:21 39:3 73:7 74:13 74:17 deals 50:9 71:8 dealt 22:17 debt 5:12 6:12,16 6:24 7:3,4,16,21 7:24 8:2,4,9 11:10 11:15,17,25 12:7 13:12,19,20 14:17 14:25 17:1,10 19:18 21:7 22:1 24:5,20 26:16,17 27:22 29:24 31:8 31:17 35:1 38:23 44:14 46:18,21 47:11 48:2 51:21 51:24 59:20,22,23 59:25 61:14,18,25 62:5 64:6 73:17 debtor 40:22 43:9 46:15 66:21	debtors 73:7 debts 7:15,21 13:24 35:7 46:20 62:5 70:1,10 december 1:19 5:20 6:2 68:3 78:15 decided 7:5 8:18 8:19 11:13 19:17 23:7 29:20 30:1,1 31:1,7,9 32:15 34:10 48:5,6 55:8 58:15 60:10 decides 29:16 deciding 39:24 decision 7:24 8:2 8:4,5,10,16,18 10:2,3 11:14,15 11:16,16,18,18,25 13:21 14:25 17:10 17:13,15 18:22 19:4,20 21:23 22:1,10,11,16 23:12,14 24:25 25:11 29:24 30:2 30:3,8,9 31:4,8,11 31:14,15,17,19,20 31:21 32:8,9,10 32:19 33:3 35:3 38:4 39:1 40:14 40:18 41:7 47:8 47:11,14 48:1,2,3 48:12 49:20 51:22 51:24,25 55:9,11 55:13,23 56:14,15 56:17 58:4,8,10 58:10,17 59:24,25 60:2,5,21 61:14 63:8,8,16 64:6,10 66:9 71:13 72:4,7 72:25 73:23 74:16 74:19 75:8,18 76:11	decisions 19:19 23:24 45:17 47:20 47:23 53:21 75:9 deduction 44:15 deemed 39:1 defendant 15:14 47:4 defendants 1:12 3:11 4:9,17,18,23 4:25 5:3,6,9,13,17 6:10,15,20,24 7:16,22 8:1,7,8,11 8:16,23 9:17 10:11,25 12:1,5 13:18 14:5,9,13 15:1,6 16:14,17 17:9,14,17,19 18:5 19:4,10,22 21:1 22:14 60:5,6 61:13 62:6,14 73:19 defense 4:24 17:4 19:16 26:10 27:1 27:3,10,15,23 33:11 34:7,14,21 41:10 42:13 43:24 48:16 55:2,6,25 56:1,10 59:10,11 74:9 75:5,20 defenses 26:6 34:23 55:24 56:5 defer 65:10 defined 7:3 62:1 definition 9:7,9 49:10 60:11,14 defraud 5:22 defrauded 47:1 defrauder 19:1 delay 5:22 deliver 37:4 demand 14:20 37:3,6,8
---	--	---	--

<p>demanded 43:7 denied 8:7 17:18 depended 14:5 depletes 12:16 deposits 5:19 13:3 63:21 72:10 designed 27:2,3,5 determination 7:9 42:6 62:12 determine 59:21 determined 60:16 72:8 determining 12:15 44:20 45:2 52:20 devine 13:1 dialogues 25:2 difference 20:2,4 38:9 44:23 46:9 52:4 different 18:3,13 32:10 45:23,24,24 46:3,4 49:23 54:11 65:15 66:24 72:1,12,19 direct 6:7 12:6 direction 10:20 directions 25:21 directly 45:18 55:12 disagree 59:24 disbelief 20:14 disclosed 7:5 discovered 43:6 discretion 36:23 discretionary 36:16 discussed 68:13 discussing 61:15 61:16 disgorge 53:3 disgorgement 53:9,13</p>	<p>dismiss 27:12 dismissed 57:14 dispute 5:13 26:9 disregard 56:18 disregarding 57:8 distance 17:16 18:5 distinct 30:13 distinction 10:12 20:3 distinguish 43:17 distinguishes 46:16 distributed 21:14 21:15 distribution 21:16 distributions 21:4 district 1:2 7:23 11:14,15,16,23 13:7 14:17 62:11 63:15 73:23 75:8 75:11,17 divorce 63:4 doctrine 8:2 document 9:4 documents 60:9 doing 63:19 dollars 21:14 due 30:21 45:9 duty 75:1</p>	<p>editorial 73:3 effect 10:7 64:23 effectively 11:12 effort 54:20 efforts 57:16 either 8:17 11:13 28:24 34:16 46:17 52:18 elected 43:25 57:20 58:22 electronic 78:8,11 element 23:9 elizabeth 35:21 else's 19:9 empowers 16:21 enabled 16:13 enacted 18:18 46:24 68:2 enacting 40:20 endorsing 61:7 ends 75:4 enforce 10:16 34:16 41:11 42:4 43:25 45:6,8 46:13 49:21,25 64:13,15 enforceability 8:20 47:13,17 enforceable 13:22 15:25 42:20 43:19 46:6,8,20 51:9,14 52:1,4,5 57:10,25 58:2 61:4 67:5,8 74:24 enforcement 50:10 64:21 enforces 68:25 enforcing 66:7 enjoin 19:12 enter 36:16 59:8 59:11 75:22 entire 20:15</p>	<p>entirely 14:2 entities 19:13 entitled 14:20 34:7 37:3,23 42:14,18,21 51:12 74:6,11 entitlement 14:4 36:9 41:12 42:19 50:25 51:12 61:5 67:9 entitlements 28:16 37:12,24 42:5 45:7 46:12 49:14 51:11 entry 28:17 42:16 42:17 equitable 40:22 41:2,4 53:2 56:16 63:14,23 equity 10:8 12:13 12:19 15:12 16:5 16:7,10,12 18:22 19:22 38:9,10 39:24,24 40:15,18 41:4 42:23,25 44:18,22 46:17 52:20 54:14 56:19 57:17 62:21 63:10 67:2 72:7,11,15 74:13,14 esq 3:7,8,15,16,17 3:24 essentially 6:11 9:5 11:11,22 12:19 13:5 15:18 16:4,18 17:9 20:4 44:15 53:7 establish 4:21,24 5:8,9 15:12 established 7:7 74:22 estate 10:21 12:11 12:12,12,20 13:16</p>
	<p>e</p>		
	<p>e 1:23,23 3:1,1 4:1 4:1 8:10 9:7,20 10:17,19 22:9,17 22:25 23:13 26:22 26:23 27:3 30:3 31:14,19,20 38:3 39:1 40:16 47:14 48:1,2,12 49:18 51:17 58:4 60:4 74:16 78:1 earlier 40:14 74:12</p>		

<p>16:9,12 17:6,7 19:15 44:13,15 62:20 63:1,12 66:25 70:17 estates 13:14 estopped 17:9 et 1:11 4:12,14 event 34:16 events 32:2 exact 68:5 exactly 53:6 example 24:8 35:25 38:25 41:7 42:15 45:10 46:19 46:25 exceeding 71:5 exceptions 37:2 excess 5:18 12:18 exchange 7:15 45:7 68:11 exchanged 7:20 62:4 excludes 73:9 exclusive 7:8 excuse 14:24 16:6 17:22 64:7,23 76:13 exhaustedly 11:24 exhaustively 35:23 exist 54:2 existed 59:23 62:20 existing 5:23 18:20 expand 19:7 expanding 15:16 19:5 expands 15:20 expense 13:16 explain 45:23 explanation 62:23</p>	<p>explicit 28:21 37:22 39:2 42:7,9 46:14 48:12 56:17 explicitly 38:3 48:5 64:9 expounded 14:4 19:18 64:9 express 9:15 29:8 expressly 6:16 8:18 11:13 56:2 58:6 extend 63:13,24 extension 23:8 extent 7:13,18 9:18 10:24 15:21 31:20 39:7,11 56:19 61:12 62:2 62:18,24 63:6 67:1 70:8,13 72:6 72:18</p>	<p>fairly 45:16 fairness 57:17 faith 8:5,15 11:18 19:18 21:13 27:12 false 5:11 falsified 72:9 family 71:10 favor 15:9 64:20 fed 72:5 federal 12:8 29:5 33:12 35:4,5,10 42:11 46:10 50:12 51:1 54:24 58:5 65:7,18 feeder 19:13 fell 9:7 felt 9:8 ferry 1:10 4:11,12 fictitious 5:2,5,19 10:6,6,21 12:24 13:12,25 23:14 28:9 36:13 37:8,9 39:22 41:23 45:14 50:15 52:9,12 53:3,10,12,13 fifth 66:9 figure 31:1 filed 21:15,20 25:17 61:18 69:18 finality 23:9 40:23 40:25 64:2 finally 56:6 financial 43:7 find 46:5 52:12,14 52:17 55:1 65:12 findings 21:23 59:8,12 75:22 fine 25:10 62:23 76:20 finish 26:19 firms 19:13 first 13:1 30:17 32:24 35:14,17</p>	<p>54:1 58:25 72:6 fishman 37:17 39:20,21 40:2,4 55:9,13 59:18 five 20:11 30:13 34:5 71:5 76:22 fixes 44:20 45:1 flatly 54:22 focus 4:25 27:17 74:21 focused 60:5 focusing 37:16,17 follow 23:19 25:8 29:20 66:5 68:22 following 5:17 67:15 74:21 follows 68:24 footnote 47:8 foreclosed 56:17 foregoing 78:3 form 64:4 formula 68:23 formulae 68:22 forth 53:21 forty 68:2 forward 76:11 found 14:1 foundation 49:13 56:4 four 4:8 fourteen 76:18,19 76:20 fourth 18:17 framework 40:16 frankly 18:11,12 fraud 10:10 34:16 43:9 45:5 46:15 49:25 61:10 67:21 fraudulent 4:17 4:23 9:14 13:10 14:1,8 16:8,9 18:12 20:13 27:8 30:19,24 35:14,18</p>
	<p>f</p> <p>f 1:23 78:1 face 34:19 faced 64:11 facie 4:22 5:14 fact 9:25 13:21,25 14:6 17:17 18:1,7 18:16 20:5,14 23:25 34:20 49:15 59:8,13 69:11 facts 4:20 5:7 6:9 18:2 22:7,8 26:9 31:3 43:4 45:4,23 45:24 factual 5:4 17:16 56:4 failed 11:1 fails 13:19 failure 13:17 69:4 fairfield 19:10,20 53:16,17 54:7,9 55:11</p>		

[fraudulent - important]

Page 9

<p>35:23 36:2 39:6 39:22 40:2,5,11 43:12 45:11,15 47:3 52:7 66:19 72:15 75:25 friends 47:22 frustration 30:25 full 15:4 fully 37:4 68:23 functionally 49:23 fundamental 29:4 42:13 fundamentally 26:23 44:19 51:24 funds 54:9 76:2 further 7:7 14:3 20:18 64:20 73:2 73:2,4 future 5:23 42:3 51:8</p>	<p>56:1 57:18 giving 61:10 66:4 glanced 24:5 go 5:16 21:11,22 22:10 23:10 25:20 30:14,15 32:3,22 33:7 35:11 38:23 58:20 69:6 72:24 goals 11:2 60:18 63:4 goes 11:14 29:3 41:7 65:16 going 12:6 20:5,8 20:10 21:10 24:1 25:19 27:6 29:25 31:7 33:25 35:21 36:17,19 54:10 55:1 64:1 67:22 good 4:3,4 8:5,15 11:18 19:18 20:24 21:13 25:23 26:4 27:12 gotten 34:18 govern 33:13 53:22 governs 73:10 75:21 graham 3:16 grant 55:22 59:9 granted 8:7 green 1:16 greenwich 19:10 53:17,18 griff 11:14 14:3 43:15 47:8,9 group 25:14 grouping 21:10 guess 8:24 48:17 guidance 68:13</p>	<p>halpers 30:8 hand 61:19 handcuffs 22:6 happen 42:2 happens 69:18 harbor 60:7,12,17 61:12 harbored 41:1 harm 67:22 harming 64:23 66:8 harmonious 18:19 harmonize 40:15 hear 24:6 29:23 59:4 67:24 72:22 73:15 heard 52:9,10 53:14 74:5 hearing 2:1 4:8 12:3 held 5:11 14:18 71:11 72:7 helped 18:1 helpful 70:20 highlighted 10:12 21:18 hinder 5:22 history 24:17 hold 67:6 holder 63:11 holding 22:15 holds 53:18 hon 1:24 honor 4:3,7,15,19 4:25 6:10,21 7:2 7:11,25 8:4 9:2,23 9:25 10:23 11:2,6 11:11 12:6,16 14:3,14 15:15,25 16:3,16 17:2,3,8 17:25 18:22 19:20 20:6,8,17,24 21:5 21:10 24:2,6</p>	<p>25:25 26:4,22 27:24 30:2 34:6 35:12 36:14,21 37:21 39:8,18 40:12 41:3,6,22 42:15 44:16 45:19 49:17 50:5,22 52:2 53:23 55:20 55:22 56:11 59:1 59:7,14,15 60:4 60:10 61:7,22,24 62:10,24 64:14,22 65:24 67:10,20 70:11 73:13,23,25 74:3 75:12 76:8 76:13,25 honor's 49:20 hostetler 3:2 4:5 huh 29:7 32:16 40:19 humble 69:18</p>
g			i
<p>g 4:1 gather 65:14 general 10:21 17:7 44:13 62:20 65:1 66:22 69:22 70:17 71:9,12,23 74:9 76:3 generally 35:15 66:18,19 generate 6:5 generated 14:6 gestures 22:5 getting 21:2 give 10:7 13:3 66:25 69:21 70:21 71:22 given 73:6 gives 26:10 34:15 35:25 38:14 39:10 41:10 45:5 46:12 50:24 53:25 54:5</p>	<p>h h 1:4 3:24 half 21:14 57:11 58:23 68:7</p>	<p>helped 18:1 helpful 70:20 highlighted 10:12 21:18 hinder 5:22 history 24:17 hold 67:6 holder 63:11 holding 22:15 holds 53:18 hon 1:24 honor 4:3,7,15,19 4:25 6:10,21 7:2 7:11,25 8:4 9:2,23 9:25 10:23 11:2,6 11:11 12:6,16 14:3,14 15:15,25 16:3,16 17:2,3,8 17:25 18:22 19:20 20:6,8,17,24 21:5 21:10 24:2,6</p>	<p>ibs 28:24 identified 14:16 identify 28:11 55:25 ignore 23:25 33:25 57:11 ignores 16:21 ii 4:12 imagine 23:17,19 impairs 15:6 implicate 64:1 implicated 55:9 55:12 implicit 55:18 implicitly 8:18 48:6 implied 55:5 impliedly 11:13 imply 17:5 important 21:22 40:20 43:2 53:17</p>

[important - kirby]

Page 10

<p>71:25 importantly 21:5 impossible 18:3 18:24 67:11 impress 61:3 improper 12:20 16:17 66:8 improperly 15:16 inapposite 67:3 included 6:17 41:12 including 7:20 62:4 inconsistent 25:9 75:12 incorporated 15:21 63:6 incorporates 16:5 16:7 26:23 54:6 incurred 7:19 57:10 58:21 62:3 indicated 15:2 35:14 60:23 63:17 67:4 indicates 18:18 indiscernible 8:3 10:9 11:8 12:4 13:7 21:24 22:12 23:20 25:15 28:25 37:22 40:25 50:16 52:2 54:19 55:17 58:6 61:4 65:2 68:18 70:14 74:2 76:14 industry 25:5 injunctive 54:17 inner 10:3 innocent 64:16,19 64:21,23,24 66:8 67:22 inquiry 75:4 insist 41:20</p>	<p>insolvency 68:18 insolvent 6:1 73:7 instance 32:24 64:22 instances 12:4 instructive 43:15 instruments 46:18 integral 26:25 intended 12:13 18:13 35:19 intent 5:22 18:18 69:7 intentional 27:8 interest 20:7 23:22 interesting 44:4 interim 21:4 interlocutory 11:17 interpretation 72:20 interpreted 40:14 interpreting 52:15 55:15 68:8 intervene 17:18 intervenors 17:20 25:15 invalid 14:2,21 53:11 invested 6:4 investment 1:6 6:3 14:5 22:21 68:3 investments 9:19 investor 3:19 21:19 68:14,15 73:11 investors 19:13,23 46:2,6,17 involve 19:14 44:14 63:23 72:14 involved 17:17,20</p>	<p>involving 13:10 19:13 irreconcilable 55:1,4 irving 1:4 issue 7:10,24 9:11 14:16 18:2 20:16 23:6,6,7 24:19 29:14 32:4,15,20 32:23 40:17 41:8 42:24 44:2 47:7,9 47:13,20 56:20 58:11 62:1,13,14 64:10 70:8 74:4 75:25 76:12 issued 7:4,24 11:19 21:6 32:8 33:24,24 issuer 43:9 issues 7:3,5,11,22 10:2 11:24 12:2,6 14:17 31:22,22 61:25 64:10 ix 73:16</p>	<p>30:6,9 31:2,3,7,11 31:16,21 32:2,3 33:18,19 34:3,10 35:2,22 38:25 39:16,19 41:6 43:2,13,16,23 44:1,7 45:10 46:25 47:5 51:21 52:5 55:8 56:8,11 56:12,15,19 58:8 59:23 62:1,16,17 64:9 66:7,12,13 66:14 71:25 73:23 74:19 judges 68:9 judgment 2:1 4:10,15,18 23:18 26:8 59:9,12 74:23 judicial 18:20 45:17 june 10:2 73:17 jurisprudence 18:10 justice 66:14,16</p>
		j	
		<p>j 3:8 j&b 66:9 j.p. 19:3 james 4:14 jennifer 3:17 joinders 6:22 joint 4:20 6:8 jpmorgan 53:8 69:20 judge 1:25 6:13 7:4 8:13 12:9,22 13:20 14:3 15:7 15:23 16:3 17:4 20:3 21:6 22:2,7 22:11,11,17,22 23:6 24:15,21,25 25:11,13,15,21 29:11,16,19,20,25</p>	<p>k k 3:21 keith 3:7 4:5 kevin 3:24 key 5:16 47:10 kinds 71:8 kirby 3:15 25:14 25:19 26:3,4,18 26:21 27:5,13,24 28:4,7,12,15,19 29:2,8,22 30:2,6 30:16 31:5,10,14 32:5,17,20,23 33:9,19,21 34:2,6 34:9,10,13,19,24 35:2,8,11,14,22 36:7,14,19,21 37:9,12,21 38:3,8</p>

[kirby - measures]

Page 11

38:16,18,21,24 39:8,18 40:3,6,12 40:20 41:3,16,22 41:25 44:16,24 45:1,18 46:23 47:7 48:15,21,23 49:1,6,13 50:5,7 50:13,16,22 51:4 52:13,16,20,25 53:6 54:3,12,19 55:10,12 56:9,25 57:3,8,23 58:2 59:1,3,6 61:16,18 63:7 64:6,14 66:12 71:15 73:18 74:2,3 76:13,16 76:20 kirby's 59:24 67:12 knew 43:7,8,8 know 6:19 10:14 16:24 21:18 22:16 22:19 23:22 24:1 24:24 25:8,18,19 25:19 31:6 33:24 38:23 47:21 52:10 53:23 55:21 56:12 59:24 68:5 69:12 69:23 72:3 73:13 knowledge 45:5 knows 25:19	18:20 19:7,23 24:21 28:4,22,25 29:1 30:19 31:3 33:14 34:12,13 35:6,10,15,19,24 36:2,8 42:4,20 45:6,11,16,17 46:3,3,11 47:2,3 47:19,25 49:15,22 50:12,23,23,24 51:1 52:7 56:2,3 58:1,3 59:8,13 61:16 68:12 71:12 72:18 lawfully 45:9 laws 35:4,5 37:16 43:13 51:11 58:5 65:8,18 66:19 lead 6:22 leave 17:11 20:9 led 22:11 legal 5:4 10:7 18:2 52:3 64:21 78:22 legally 42:19 46:6 46:7,20 51:14 52:1,5 57:10 74:10,24 legitimate 6:5 14:19 lehman 71:22,23 lend 67:21 length 61:15 lens 15:24 letter 70:7 71:4 76:12 lifetime 68:7 limit 58:12 75:10 limitation 57:5 58:19 limitations 10:17 15:3 57:4 58:18 58:18	limited 40:7 66:21 limits 33:3 56:24 line 72:24 lines 20:23 lip 20:4 liquidation 1:5 10:24 65:3,4,7,13 68:21 69:1,17 70:3,9 71:16,17 71:23 73:9,10,11 lisa 2:25 78:3,10 litigated 11:13 litigation 13:11 17:1 little 35:21 llc 1:7 llp 3:10 lo 69:21 lock 68:21 locked 69:2,3 lockerby 32:7 logical 49:6 67:12 long 23:23 32:7 46:24 72:24 longer 58:9 look 8:13 23:11 27:16 33:7,8 39:4 39:4,23 41:1 42:2 44:5 49:1 55:15 55:16 59:20 68:20 72:1,3 73:16 74:20 75:18 76:11 looked 6:18 looking 9:3 48:9 60:8,8,15 looks 75:14 loser 52:18 63:11 losers 20:12 losing 13:16 lot 47:22 52:13 73:15 lowery 4:14 6:18	lowry 57:13 lynch 69:12 m m 1:24 machinations 10:8 madoff 1:6 4:2 7:14,15,19 14:6 14:19 22:21 36:23 38:1 46:2 47:1 62:3 64:17 madoff's 10:8 61:10 mail 49:18 making 12:19 management 28:24 mandate 8:13 11:7 21:25 25:22 31:15,18 32:24,25 33:23,25 39:3 42:8 44:9 47:15 48:3,4,7,11 51:16 51:20 55:14 68:11 73:24 manner 40:15 markets 27:4 marks 11:22 material 6:8 materials 71:10 matter 5:9 29:21 53:2 56:19 73:17 matters 23:2 mckenzie 3:10 mean 24:13,24 76:4,17 meaning 73:20 means 49:17 55:17 measure 72:8,19 measured 14:15 measures 42:22
l			
l 1:6 lack 5:4 laid 31:1 langley 18:17 language 53:12 large 70:12 larger 33:11,11 laughter 20:22 law 5:9 8:12 9:17 11:7 12:4 13:1 17:10 18:11,12,14			

[mention - order]

Page 12

mention 34:20 35:9 63:7 mentioned 33:14 54:4 60:10 74:12 74:19 mentions 35:3,4 merits 7:5 merkin 54:9 merrell 69:12 method 15:9 63:20 methodology 63:22 million 22:14 67:14,16,17 69:3 69:23 mineola 78:25 minute 34:5 38:14 mismanagement 43:7 misread 30:21 missouri 4:13 misstating 8:17 mistakes 71:17 mixing 44:16 mode 76:4 moment 8:9,10 11:9 55:20 56:12 momentarily 66:6 money 21:1,3 22:14,18 23:8 36:1,1 37:19 38:12 41:20 43:9 43:10 50:21,23 68:21 69:1 monster 68:18 month 23:12 67:13,15 months 71:14 72:17,22 morgan 19:3 morning 4:3,4,7 20:24 26:4 52:11	53:14 motion 2:1 6:19 8:6 11:16 21:16 27:13 29:13 34:11 55:23 motions 4:18 8:7 mruphy 17:24 murphy 3:7 4:3,5 4:5 6:21,25 7:2 9:2,21,23,25 11:4 17:2,22 20:20,23 21:18 23:11 59:15 60:4 61:6,21 62:9 62:23 65:3,5,10 66:2,4,14,18 67:10,19 76:18,22 76:25 murphy's 23:21	62:7,9 new 1:2,17,17 3:5 8:13 36:8 42:20 71:12 72:6,18 73:5 newly 18:18 nicholas 3:8 night 34:4 nixon 68:4 non 13:2,15 76:5 nonbankruptcy 58:1,3 76:7 noncustomer 65:17 normal 54:23 norms 39:13 55:7 nos 2:2 note 6:15 11:11 16:3 20:10 61:13 73:15 noted 12:22 15:23 15:25 notice 35:20 notion 24:7,19 notwithstanding 46:15 novo 11:21 nub 41:7 number 7:13 30:20 68:5 numerous 6:14 nw 3:12 ny 3:5 78:25	obligations 7:19 13:17,18,22 14:12 24:21 33:10 57:10 57:13,19,22 58:21 58:23,24 60:25 62:3,10,11,15,18 62:19,21,25 65:17 75:2 76:3 obligations003f 62:8 obviously 41:18 41:18 occasion 44:1 occurred 23:2 29:24 31:3 32:2 october 25:1 oh 39:21 44:6 75:16 okay 4:2 6:23 7:1 22:24 30:5 31:13 32:22 35:13 36:20 37:11,11 50:9 54:20 59:3 60:4 61:21 70:4 72:16 76:10,20 old 78:23 omnibus 8:5,15 11:18 19:18 once 7:23 opening 9:4 60:9 operating 5:24 opined 71:25 72:1 opinion 10:1 29:18 43:2,16 44:1 69:18 72:5 opportunity 12:2 33:21 oppose 4:18 opposed 50:6 option 34:15,15 46:13 64:13 order 7:4,6,7,8 12:7 16:22 31:25
	n n 3:1 4:1 78:1 n.w. 3:21 natures 72:1 necessarily 17:5 50:12 necessary 66:5 need 13:23 40:22 needed 58:23 net 12:13,19 13:14,16 15:12 16:5,6,10,12 18:6 18:9,22 20:12 38:9,10 39:24,24 40:14,18 42:23,25 44:18,22 52:17,17 52:20 54:14 62:21 63:10,11,11 66:8 67:2 72:7,11,14 74:13,14 75:20 netting 15:9,11 63:10,19,20 never 8:19,21 20:15 22:21 23:5 34:2 44:2 57:19	o o 1:23 4:1 78:1 obligate 37:19 obligated 18:25 obligation 13:13 28:2 36:2,4,6,7 37:5,7,10 38:7 57:25 58:4 63:12 74:8,25 75:4	

[order - president]

Page 13

55:6 original 68:10 outlier 58:16 75:20 outline 30:14 outside 54:2 outstanding 75:4 overall 63:4 overruled 43:20 overrules 30:8 owed 7:16,21 13:25 36:2 62:5 63:12	48:11,15,16,23 49:16 51:6 55:13 55:17 57:9 participants 6:17 participated 6:15 17:25 48:1 particular 20:1 28:25 49:11 60:1 60:2,5 parties 4:20 6:24 17:21,23,24 55:21 party 47:9 64:19 64:21 passed 21:15 passem 73:20 path 23:20 pause 68:1 pay 16:10,22 36:1 37:6,7,12,19 43:10 54:10 65:1 65:9,17 66:21 70:1,10 paying 43:11 payment 8:25,25 9:10 12:17 22:20 22:20 23:1,1,9 26:15,15,16 27:18 27:21,21 28:2,22 36:12 37:23 41:20 42:5,6 43:7 48:8 49:2,9 51:12 60:13 payments 8:22 9:8,13 26:11,12 26:12 27:15 28:9 28:21 36:5,6 42:15 43:21 47:3 48:19 49:10 51:17 56:2 64:16 65:16 76:2 pays 36:1 people's 22:14	period 10:18 15:5 23:3 63:25 68:25 periodic 51:6 periods 15:3 63:13 permit 35:15 permitted 33:15 64:18 perspective 29:13 petition 44:21 ph 10:2 11:15 13:5 21:9 32:7 43:3 57:13 71:21 72:24 phrased 56:13 61:9 phrases 52:23 physical 37:3,4 42:17 picard 1:4 4:11,12 4:13,13 pick 22:4 45:12 place 54:1 58:25 placed 25:3 plaintiff 1:8 planned 30:12 plaza 3:4 plead 34:23 please 26:5 point 17:8 18:21 18:21 20:18 21:22 30:17 32:6,25 33:11 39:2 42:3,7 42:10 43:1,21 45:12 47:10 48:12 48:18 52:22 53:6 58:14,15 59:13 62:13 65:11 71:25 points 5:16 6:2 25:10 30:13 59:10 59:16 policies 64:20	policy 64:19 ponzi 5:24 9:14 10:22 13:10 14:10 18:6,7,8,10,11,14 19:23 20:1,5 40:10 46:21,24 47:16 portion 55:19 position 30:7,20 31:10 posits 46:25 possible 67:20 possibly 72:18 post 71:23 pot 69:6 potentially 47:25 66:2 power 10:9,17 53:9,10 54:1 56:18 powerman 13:5 powers 15:17,19 15:23 16:13 19:5 19:6,7 58:9,20 pre 68:20 69:17 70:9,9 71:16,16 76:4,5 precedent 8:2 preclude 64:25 precludes 69:25 predates 18:10 predicate 17:17 preempt 29:3 preempted 33:15 49:15 prejudgment 20:7 23:22 prejudice 57:15 premise 27:25 preserves 46:10 46:11 56:2 58:6 president 68:4 69:22
p			
p 3:1,1 4:1 page 40:8,12 48:12 64:7 72:4 73:14,16 pages 61:22,23 71:5 76:22 paid 20:4 37:4 46:11 67:1 68:23 74:10 pan 31:23 32:7 33:2 paper 10:7 37:1 papers 8:16 17:8 17:11,12 31:23 33:2 35:17 44:5 47:9 50:18 52:10 53:22 58:13 75:13 paragraph 36:25 parcel 48:16 51:6 pardon 56:25 parenthetical 67:7 part 14:1 18:12 27:8 29:4,5 30:3 30:25 31:15,25 33:12 39:2 40:16 42:8,11,12 45:4 45:11,15,17 46:15 47:15 48:3,8,11			

[pressing - rebuttal]

Page 14

pressing 19:12	41:23 45:14 50:15	purported 11:6	22:22 23:7 24:15
presumed 18:19	52:9,12 53:3,10	purpose 49:11	24:21,25 25:11,21
prevail 54:11	53:13,13 70:14	68:16	29:11,16,19,20,25
prevent 54:17	prong 62:2	purposes 26:15,19	30:6 31:2,3,7 32:2
65:8	proof 5:15	54:16	32:3 33:18,19
prevents 69:8	proper 35:12 72:7	pursuant 69:14	34:3,10 39:17,19
previous 11:12	property 12:11,12	pursue 20:8 39:11	43:16,23 44:1,7
previously 11:10	12:20 13:16 16:9	53:9 57:17,20	47:6 51:21 55:8
12:2 19:19	16:22 17:6 19:15	58:22	56:8,19 59:23
prima 4:22 5:14	62:22 63:1 65:1,9	pursuing 58:22	62:1,16,17 64:9
primary 4:25	65:13,17 66:24	put 18:9 21:17	72:1
principal 59:17	67:1 69:17,25	29:12 72:23 75:1	rakoff's 8:13 30:9
principle 9:18	70:10	putting 45:13	31:11,16,21 35:3
13:4 54:12,20	propose 59:8	58:8	56:15 58:8
principles 54:15	proposed 15:1	q	reach 15:3,5 18:3
63:14	59:12 75:22	qualified 9:9	35:24,25 47:3
prior 5:2,19 47:20	protect 5:4 10:9	27:21	56:15 58:9,12
47:23 49:19	protected 42:10	qualify 62:25	63:25 75:10
priorities 16:15	protection 3:19	question 9:16	read 27:9 30:15
prioritize 66:24	21:19 60:17,18	25:20 27:20 34:12	30:22 34:4 35:2
prioritizes 16:5,6	68:3,12,14,15	34:13 36:3,17,21	37:18 39:14 44:1
prioritizing 66:20	73:11	51:18 65:15,23	46:4,16 48:11
priority 12:12,17	protections 9:18	69:5 71:18 75:24	52:11 55:18 58:17
16:6,7,12,18,22	60:7	quotation 23:11	67:8 72:19 73:8
pro 2:2	provide 10:21	quote 49:19 73:23	reading 24:17
probably 30:11	27:3 35:6 36:22	r	ready 23:22
problem 43:19	38:6 44:13 45:14	r	reaffirm 23:21
procedures 7:6,7	73:5	r 1:23 3:1,7,16 4:1	reaffirmed 13:4
7:9	provided 5:1 7:6	78:1	23:13
proceed 53:4	13:13 23:25 24:18	raise 12:2 34:14	real 8:22 10:7
proceeding 6:12	provides 15:18,20	47:9 61:22 73:15	reality 15:7 19:2
21:20 72:2 73:9	28:12 50:23	raised 6:13,13	64:17 67:10
73:11	provision 10:25	11:10,12 14:13,24	really 9:1,3 15:8
proceedings 4:8	27:7 29:8 48:9	15:1 18:3 24:4	17:15 20:4,15
5:10,25 7:10,25	49:14 54:4 56:16	34:3,25 48:18	41:7 49:23 52:8,8
8:6 18:1 21:13	73:7	61:13,18 62:13,14	58:17 67:3 70:12
73:10 77:1 78:4	provision's 58:18	63:7 64:5 70:5,21	71:12
proffered 23:17	provisions 10:23	75:25	reason 26:8,22
profit 12:24 14:7	15:21 25:9 30:24	raising 43:9	51:19 66:23
profits 5:2,5,11,19	38:19 53:1,5,8,20	rakoff 6:13 7:4	reasons 13:20
6:5 10:6,7,22	54:3 63:5,5	12:9,22 13:20	59:25
12:18 13:12 28:10	published 21:23	14:3 15:7,23 16:3	rebuttal 20:18
36:13 37:8,9		17:4 20:3 21:6	59:5
		22:2,7,11,12,17	

[recall - ryan]

Page 15

<p>recall 21:9 25:14 receive 37:4 45:9 received 5:2 26:11 28:16 38:11 receiving 76:12 recipients 5:18 recognized 12:1 28:20 51:11 59:19 63:13 75:19 recognizing 28:20 28:21 recommendation 11:19,21 record 5:7 6:19 22:4 78:4 recorded 18:16 recover 13:15 15:10 16:8,22 53:2 57:6 74:8 76:1 recovery 20:12 53:19,25 54:13 refer 23:5 72:21 reference 6:20 29:14,14 31:8 32:1,4 64:8 72:9 72:10 73:19 referenced 59:18 referred 72:25 referring 56:23 57:1 66:12 72:11 72:23 reflect 18:24 reflected 8:22 67:11 reflections 19:2 refuse 10:5 regard 64:2 regarding 68:9 regardless 17:25 63:18 registered 46:1</p>	<p>regulation 69:9 reinforced 49:16 reject 56:15 rejected 8:15 11:6 12:3,9 13:21 14:18 15:7,8,17 19:19,25 31:2 38:1,2 related 10:16 16:16 19:13 75:13 relating 10:3 16:1 relationship 19:15,17 25:1 released 68:12 relevant 5:25 37:2 relief 54:17 73:6 relitigate 12:5 rely 45:7 remand 32:21 remanded 32:6 remedies 56:3 remedy 58:23 remember 34:14 43:4 46:23 repeal 55:5 repeatedly 5:11 replacing 39:15 replied 71:7 report 11:19,20 36:9 42:18 51:5,6 reported 13:24 37:13 41:13 50:25 51:10 reports 28:16 repose 14:23,23 15:3 30:10 33:4,6 56:7,7,9,18 57:2 58:7,13 59:10 63:13,14 64:4,5,8 75:6,10,11,14,21 representation 14:6</p>	<p>requested 20:6 require 36:12 required 48:4 requirement 37:23 requires 8:12,13 12:16 rescission 46:7 reserve 76:11 reset 15:8 56:13 56:20 resolved 21:12 resorts 53:12 resources 12:17 66:21,21 respect 8:9 9:8 12:8,11,15 13:17 14:22 30:9,21 38:9 61:1 64:13 74:12 responding 36:11 response 44:5,6 45:15 responsibility 32:17 result 9:14 18:13 40:11,22 41:2 59:22 60:2 retain 26:11 50:14 50:14 retrieve 51:17 return 14:5 66:25 returned 7:25 review 11:21 12:23 13:7 reviewed 11:24 12:9 reviewing 32:18 reviews 35:23 revised 18:19 revisions 15:22 revisit 31:22,22</p>	<p>revisiting 55:23 richard 3:15 right 26:10 28:8 28:14,22 29:1,2 33:20,24 35:22,22 38:15,17,20 39:10 41:11,12,14,15,17 41:20 42:10 44:24 45:6 46:13,23,23 50:11,21,24 51:9 56:1,2 57:3,7,18 63:24 64:16 65:25 66:25 67:17,19 71:24,24 76:1,23 rights 15:6 41:11 42:4 43:25 45:8 46:6,8,10,11,14 46:18 47:14,17 50:1,4,6,8,10,19 51:14 52:1,4,5,6 56:3 74:24 rises 50:13 risk 20:15 road 78:23 rockefeller 3:4 roiling 27:4 rosemann 72:3,23 rosenman 71:10 rule 9:17 13:9,11 25:16 27:2 32:8 32:10 35:15 48:13 68:13,19,20,21 69:15,16,17,24 72:12 ruled 32:10 46:19 rules 12:25 16:8 68:24 69:4 71:20 ruling 9:15 rulings 8:1,13 run 53:7 ryan 73:6</p>
--	--	--	---

[s - six]

Page 16

s	40:4,6,8 42:6,8 43:3,11,20,23 44:9 46:3 47:12 48:7,18 51:16,20 52:19 58:3 60:7 60:15,15,21 61:7 62:1,2 67:5 section 4:16 8:10 24:8 40:16 41:9 47:14 48:1,2 59:19 61:16,17 63:22 68:10 74:16 sections 61:17 secured 45:6 securities 1:7 3:19 6:4 7:14,16,19 8:20,22 9:6,10 12:8 14:6,20 21:19 24:20 27:4 27:7 28:5,16 29:6 29:9 35:4,5 36:9 36:24 37:4,12,16 37:24 41:12 42:4 42:16,17,18 45:6 45:7 46:2,12 49:10,14,25 50:25 51:5,6,10,11,12 58:5 60:23,24 61:3,4,6,8,16 62:3 65:8,18 67:8 68:3 68:11,14,15,23 72:11 73:11 security 35:10 36:8 see 26:21 29:12 64:7 66:20 72:5 73:19 seeing 11:23 seek 4:15 9:17 15:10 20:7 73:6 seeking 52:25 53:2 74:9	seeks 7:14 74:7 seen 19:11,21 segar 10:2 23:12 28:24 38:8 seminole 22:10 semko 3:17 sending 48:19 sends 29:17 sense 44:11 49:2 57:18 sent 49:18 separate 12:11 17:14 28:15 separately 61:14 serves 49:11 service 20:4 set 53:21 62:21 68:16 75:1,3 settled 11:24 25:17 45:13 settlement 8:21 8:25 9:10 22:20 23:1,8 26:12,14 27:21 28:20 42:5 42:6 43:21 48:8 49:2,9,10 51:17 54:8,17 60:13 settlements 19:12 seven 68:2 seventh 11:22 20:11 shar 43:3,4,6,17 52:6 74:21 shoes 19:1 show 11:1 70:3 showed 67:15,16 side 70:7,21 signed 68:4 signs 51:7 silverman 13:4 46:19 similar 18:2 43:4	simplest 45:20,21 simply 13:18 15:11 28:12 36:22 54:6 63:4 75:6 simultaneous 70:23 single 35:9 sipa 10:13,24,25 11:2 12:11,16,21 13:2,2,10,14,15 15:18,18,19,22 16:2,4,6,21 17:4 18:11 23:24 24:1 24:17 25:3,9 29:4 29:5 30:21,24 33:12 38:9,12,13 38:14,18,18 39:5 39:5,7,8,10,14,24 39:24 40:15,17 42:11,12,23,25 44:17,18,20 45:13 48:10 49:17,22 52:21 53:19,24,25 54:2,14,22,25 55:6,6,12,16 60:18 63:3,6 64:25 65:6 66:23 66:24 67:3 68:21 69:17 70:9 71:8 71:17,23 72:8,21 73:1,7 74:5,13 76:4,5 sipa's 15:24 16:17 63:4 sipc 30:22 40:9 47:22 situation 16:11 43:5 54:8 60:16 64:18,24 65:12 67:3 76:9 six 11:12 22:18 23:8,12 71:14 72:17,22
----------	--	--	--

[slaps - thing]

Page 17

<p>slaps 69:11 slate 63:2 slip 72:5 slow 21:11 slowest 21:11 smb 1:9 sole 7:8 solutions 78:22 somebody 15:12 66:20 somewhat 70:18 soon 21:15 sorry 6:21 22:6 24:6 40:3 73:13 76:21 sort 25:5 54:20 74:20 sought 4:9 26:8 sound 21:24 50:17 sounds 36:10 50:17 51:13 73:23 source 28:1 36:4,7 south 1:10 2:25 4:11,12 78:3,7 southern 1:2 speak 25:25 speaking 68:9 speaks 54:19 special 54:3 specific 8:8 60:19 64:9 69:5 73:6 specifically 14:16 47:13 61:17,22 62:16 64:25 spends 43:16 spent 47:21 68:8 spic 3:20 spoke 62:16 spoken 59:1 standing 39:9 54:5 start 21:24 28:10 35:11 70:18</p>	<p>started 72:2 state 12:8 16:17 28:4,22 33:14 35:6 42:4 45:6 46:11 49:14,22 50:11,22,23,24 56:2,3 58:5 60:22 60:24 stated 8:21 16:4 statement 20:21 23:21 28:15 29:1 statements 4:20 4:21 6:8 13:22 16:1 18:24 19:2 23:14 38:6 60:23 67:11,15,16 72:9 states 1:1 18:17 73:19 statute 10:17 14:22,23 15:1 18:19 24:17 25:3 25:3 26:24,24,25 27:6,8,9,17,17 29:6,9 30:9,21,22 33:4,6,10,13 35:20 39:5,12 42:12 44:6,18 45:16 48:16 52:15 52:18,24 54:5,14 55:3 56:6,7,9,18 57:2,4,9,11,18 58:7,18,21 59:10 60:1,14,19,20 63:14 64:4,5,8 68:8,10 69:9,15 69:24 73:10 75:6 75:10,11,14,21 statutes 15:2,3 33:13 46:10 52:11 52:14 54:25 58:13 65:7 76:1 statutory 10:20 15:24 19:6 26:10</p>	<p>37:15 39:14 40:16 41:14 50:6,7 54:23 55:7 56:1,4 63:5 steals 35:25 step 18:25 36:15 steps 21:8 69:11 stipulated 45:25 56:4 stipulations 6:7 stolen 20:23 stop 54:8 strangers 38:11 street 3:21 stronger 50:8 struck 40:21 stuart 1:24 stunned 20:13 subject 22:13 66:2 submit 64:8 70:7 submitted 73:17 subsequently 57:14 substantive 15:6 57:4 58:19 sufficient 16:10 22:9 suggest 19:22 20:1 31:23 54:21 72:19 suggested 10:11 47:22 56:22 suggestion 52:2 67:13 suggests 15:16 64:14 67:8 75:7 suing 57:6 suite 3:21 78:24 sum 66:22 summary 2:1 4:9 4:15,18 26:8 59:9 74:22</p>	<p>superseded 31:11 56:21 66:3,4 supersedes 30:3 30:24 51:20 supplement 65:22 supposed 35:24 35:25 supreme 30:8 32:10 33:3 66:17 72:25 sure 49:5,8 suspended 72:21 swain 25:13 swed 21:9 system 16:6,7 28:17 42:16,17</p>
			<p>t</p>
			<p>t 78:1,1 take 20:12 24:2 42:15 65:6 talk 21:8 47:20 70:18 talked 41:17 69:22 talking 30:13 53:14 64:3 66:6 67:23 70:13 74:7 talks 58:17 tell 29:12 65:11 ten 20:12 term 33:4 52:9,12 53:3 terminology 18:6 terms 40:25 52:13 thank 9:23 11:4 20:19 25:25 26:1 26:2,4 59:6,14 73:25 74:1 75:24 76:10,10,23,23,25 thereof 6:12 thing 33:1 43:23 48:7 60:13</p>

[think - value]

Page 18

think 9:25 17:24 20:13,20 22:4,8 24:9 25:11,20 26:3 28:23 29:16 30:11 32:1,5 33:23,25 34:5,22 35:12 36:22 41:19 43:1,15 45:20 47:21 48:17 50:8 51:15,20 55:21 57:21 67:2,4,12 71:15 75:4,20 thought 6:18 22:24 40:1 thousand 23:20 time 6:17 7:12,17 7:22 9:10,11 10:4 11:22 12:5 14:14 14:15 16:19,20 18:23 20:11,15 23:23 24:2 26:11 27:16 28:22 42:1 42:3,14,21 43:11 43:17,19,22 45:1 45:8,9 47:4,18,22 49:7 51:18 52:5,7 53:11 56:14 59:19 59:21,23 60:8 62:14 65:16 68:25 74:11,23,24 times 5:25 6:14 11:12 34:5 52:10 52:11 75:3 title 15:19 25:4 39:12 today 20:25 told 20:11 tolling 63:23,24 tort 50:17 51:13 trade 6:4 36:24 trades 14:10 67:11	trading 35:23 43:2,17 60:9 66:11 tradition 35:18 transaction 54:1 transactions 8:22 18:25 40:25 51:8 transcribed 2:25 transcriber 78:8 78:11 transcript 78:4 transfer 13:11 14:14,15 15:5,23 16:8,20 26:12 27:8,16 30:19,24 35:15,18,24 36:2 39:6,11 42:1,3 43:13 45:3,11,16 47:3,4,18 49:7 52:7 59:20,21 66:19 75:3 76:1 transferee 13:3 15:4 27:3 transfers 4:17,23 5:5,7,18,21 7:13 7:17 8:21 9:9 10:3 10:18 12:24 15:11 16:9,14,21 18:12 20:13,15 33:9 39:22 40:2,5,10 42:14 53:11 57:7 58:21,22 60:23 74:25 treat 10:5 19:1 33:4 treats 74:14 true 36:25 54:18 78:4 trumps 28:25 trustee 1:4 3:3 4:6 4:9,19 7:14,20 13:23 15:6,10,13 15:16,18,19 16:8	16:11,14,21 18:25 19:4,5,12 21:12 25:17 30:17 34:22 35:16 38:15 39:9 39:20,21 40:9 41:4,5 45:3,25 46:25 47:2,21 52:25 53:25 54:5 54:8,10,11 56:3 56:24 57:11 62:4 62:7,9 63:9,25 65:13 69:19,20 71:8 75:1 trustee's 4:16,22 8:6 10:17 15:9,23 34:19 44:5 52:8 57:5,16 58:19 63:19 74:25 trying 19:4,7 28:10 31:1 43:17 53:7 54:8 turn 8:10 11:9 26:3 66:11 two 5:2,19 7:18 10:18 12:25 13:14 15:11 20:15 22:12 22:17 23:3,8 26:6 30:20 33:7,13 38:1 46:9 47:24 54:24 55:24 56:15 57:6 58:12,20 59:9 64:1 71:8,17 76:15,16 type 63:24	underlying 49:4 57:19,22 understand 30:16 31:10 37:14 38:22 44:25 52:22 71:16 understanding 50:10 understood 24:25 30:18 undisputed 4:20 6:8 unenforceable 14:2 uniform 73:5,8 united 1:1 4:13 18:16 73:19 unsecured 71:9 74:10 use 62:2 70:9 uses 36:1 53:2 66:21
			v
			v 1:9 66:9 75:14 vain 16:16 valentine's 21:8 23:18 valid 5:12 8:21 9:12 12:10 14:11 26:12 27:18 43:10 43:11,22 47:3,4 51:18 52:6 58:9 58:24 59:20,22 60:23,24 62:11,15 62:18 74:23 validity 45:2 61:8 value 5:1,7,10 7:3 7:15,21 9:1,11,16 10:21 12:4,10,15 12:24 13:3,13 14:15 15:5 16:2 16:19 19:16 27:22 35:6 45:14 48:16 49:3,7,9 55:2,6
		u	
		u.s. 1:15,25 ucc 36:8 37:22 42:19 49:13 59:18 uh 29:7 32:16 40:19 ultimately 61:9 unable 54:10	

[value - zero]

Page 19

58:8 59:10 60:21 62:4,25 63:20 75:5 variation 6:12 vehicle 20:1 veritext 78:22 versus 4:11,12,13 4:14 13:5 18:17 64:19 vested 36:23 victim 49:25 victims 13:16 20:25 53:15 55:6 view 10:1 30:2 32:25 42:7 44:4 47:16 57:16 58:7 viewed 9:5 15:24 16:20 violation 12:7,21 65:18 void 34:17 39:11 voidable 39:12	68:20 70:4 75:1 75:17 we've 19:21,23 21:20 24:16 26:8 32:14 41:10 52:9 52:10 53:13 55:24 59:1 70:13 74:22 75:15 weeks 76:15,16 went 61:15 we're 74:9 whatsoever 9:16 17:15 20:3 wholly 14:8 win 53:11 winner 13:15 18:6 52:17 63:11 winners 18:9 wins 27:6 wiping 27:10 wish 66:1 withdraw 6:19 18:8 29:14 31:8 32:4 withdrawals 63:21 withdrawing 32:1 73:18 withdrawn 7:9,11 14:17 29:15 61:25 61:25 withdrew 67:17 withholding 12:18 word 37:9 words 25:6,7 32:1 52:23 work 66:23 worry 54:14 wrap 59:4 wrist 69:11 writes 71:12	writing 63:2 writings 25:12 written 18:14 24:17 25:4,7 55:2 61:3 wrong 29:25 31:7 32:2 33:19,25 75:16 wrongdoer 64:19 wrote 25:15 72:17
w		x
wait 38:14 waldburger 75:14 walked 69:19 want 8:9 11:9 18:5,21 38:24 41:6 43:1 47:19 65:19,20 66:11 70:24 76:17 wanted 18:13 21:17 62:15 wants 20:21 war 64:22 washington 3:13 3:22 way 17:6 19:14 27:9 30:22,23 35:12 36:10 39:14 45:20,21 55:22 60:22,25 61:11 63:21,23 67:6		x 1:3,13
		y
		yeah 17:21 24:10 24:12,23 54:7 55:8,10 70:24 71:6 year 10:18 15:11 20:15 22:18,18 23:3,8 56:15 57:7 58:12 years 5:2,19 18:23 20:11,12 33:7 38:2,12 58:16,20 64:1 68:2,8 yesterday 24:5 49:17 york 1:2,17,17 3:5 36:8 42:20 71:12 72:6,18 73:5
		z
		zero 15:8 56:13 56:20